TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]45

MARINE RAILWAY AND COAL COMPANY, INC.,
PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 7, 1920.

(27,665)

(27,665)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 910.

MARINE RAILWAY AND COAL COMPANY, INC., PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 17, 1920.

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Court of Appeals of the District of Columbia.

No. 3312.

MARINE RAILWAY AND COAL COMPANY, INC., a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA.

a Supreme Court of the District of Columbia.

At Law. No. 54872.

UNITED STATES OF AMERICA, Plaintiff,

vs.

MARINE RAILWAY AND COAL COMPANY, INC., a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:—

1 *Declaration.*

Filed July 29, 1912.

In the Supreme Court of the District of Columbia.

At Law. No. 54872.

UNITED STATES OF AMERICA

vs.

MARINE RAILWAY AND COAL COMPANY, INC., a Corporation.

The Plaintiff, the United States of America, by Clarence R. Wilson, its Attorney in and for the District of Columbia, and Reeves T. Strickland, Special Assistant to the Attorney General, sues the defendant, the Marine Railway and Coal Company, Inc., a corporation, organized and existing under the laws of the State of Virginia, and having its place of business in the City of Alexandria, in the State of Virginia, to recover the following described real estate, to wit: a certain parcel of land containing 60,984 square feet situated below and to the east of the high-water line of the Potomac River at or adjacent to the City of Alexandria, State of Virginia, as said high-water line existed on the first day of January, A. D. 1911, within the limits of the District of Columbia, and more particularly described by metes and bounds to be as follows:

Beginning at a point 262.47′ South of the Center line of Franklin St. and 54.6′ E. of the W. line of Union St. measured at right angles thereto, said point being the end of a fence, and running thence

(1) N. 74° 52′ 10″ E.—368′ more or less, to a point; thence—

(2) By a straight line 172′ more or less to the N. western end of retaining wall; thence,

(3) 195′ more or less along retaining wall as said wall runs to point; thence

(4) N. 80° 49′ W.—632′ more or less, along a line parallel to the center line of Franklin St. to point of beginning. See Blue Print Exhibit A, hereto attached,

and all the rights, easements, priliveges, and appurtenances to the same belonging or in anywise appertaining, which said real estate and premises plaintiff claims in fee simple, and of which it, the said plaintiff, was heretofore, to wit, on the eighth and ninth days of January, A. D. 1912, lawfully seized and possessed, when the said defendant wrongfully entered the same and unlawfuliy ejected the plaintiff therefrom, and which the said defendant now unjustly and unlawfully detains from the said plaintiff. And the plaintiff claims possession of the said real estate and the appurtenances thereto, together with the costs of this suit.

CLARENCE R. WILSON,
Attorney of the United States in and for the District of Columbia,

By REGINALD S. HUIDEKOPER,
Ass't Attorney of the United States in and for the District of Columbia.

REEVES T. STRICKLAND,
Special Assistant to the Attorney General.

(EXHIBIT "A.")

(Plat of Battery Cove, Alexandria, Va., showing fill adjacent to Agnew's ship yard made by United States.)

Plea.

Filed Oct. 1, 1912.

* * * * * * *

Now comes the defendant herein, Marine Railway & Coal Company, Incorporated, and says that this court ought not to have or take any cognizance of this action, because the supposed
2 cause of action did not, nor did any part thereof, arise within the District of Columbia, but that the supposed cause of action, and every part thereof, did arise within the City of Alexandria, in the State of Virginia, and that at the time of the issuing of the writ in this cause, and now, the real estate described in plaintiff's declaration was not situated within the limits of the District of Columbia aforesaid, but said described real estate was then, has ever since been, and is now, situated within the limits of the City of

Alexandria, County of Alexandria, and Commonwealth of Virginia, for that said described real estate was then, has been ever since, and is now wholly situated within the cove, inlet or indentation on the banks of the Potomac River, on the south or Virginia side of said River, commonly known as Battery Cove, and between the headlands on said south or Virginia side of said river commonly known as Jones' Point and Point Lumley, and wholly within the line of low water mark at said head lands, on the south or Virginia side of Potomac River, and wholly within the limits of the City of Alexandria, County of Alexandria, and Commonwealth of Virginia; and defendant says that the cause of action alleged in the declaration, if any accrued to plaintiff, so accrued within the City of Alexandria, County of Alexandria, Commonwealth of Virginia, and within the jurisdiction of the Corporation Court of said City of Alexandria, or the Circuit Court of said City of Alexandria, within and for said City, County and Commonwealth, and not within this, the District of Columbia, nor within the jurisdiction of this Honorable Court.

JAMES R. CATON,
HAMILTON, YERKES & HAMILTON,
Attorneys for Defendant.

CITY OF ALEXANDRIA,
State of Virginia, ss:

James R. Caton, Attorney in Fact for the defendant, Marine Railway & Coal Company, Inc., makes oath and says that the above plea is true in substance and fact.

JAMES R. CATON,
Attorney in Fact of Marine Railway & Coal Co., Inc.

Subscribed and sworn to before me by James R. Caton, to me personally known, this 30" day of September, 1912.

[SEAL.]

HARRY M. FINNEY,
Notary Public, D. C.

Joinder of Issue.

Filed October 15, 1912.

* * * * * * *

The plaintiff joins issue upon the defendant's plea filed herein.

CLARENCE R. WILSON,
Attorney for Plaintiff.

Stipulation.

Filed January 17th, 1916.

For the purpose of facilitating and shortening the trial of the issues joined, or to be joined, in this case, it is stipulated and agreed

by counsel for the plaintiff and for the defendant that, at any trial or hearing of this case, the statements of matters of fact, hereinafter made on behalf of either party, shall be taken and treated as if witnesses adduced and sworn on behalf of the party specified had testified in open court, to the same tenor and effect, subject, however, to all proper objections to the admissibility, competency and sufficiency of such evidence, and that the recitals, or abstracts, of the contents or purport of the charters, grants, statutes, treaties, compacts, deeds, instruments, proceedings and other documentary evidence, hereinafter contained, made on behalf of either party, shall be taken and treated as if the authentic originals thereof were duly offered in evidence by the party specified, subject, however, to all proper objections to the admissibility, competency and sufficiency of the originals, to which originals, and the whole text thereof, (should occasion require) reference may be had by either party at any trial or hearing: that is to say:

I.

On behalf of the plaintiff, the United States, the following are offered in evidence:

Location of Land in Dispute.

a. That this is an action of ejectment brought by the plaintiff to recover of the defendant, a corporation, the fee of the parcel of land described in the declaration as follows:

"Beginning at a point 262.47′ South of the Center line of Franklin St. and 54.6′ E. of the W. line of Union St, measured at right angles thereto, said point being the end of a fence, and running thence

(1) N. 74° 52′ 10″ E.—368′ more or less, to a point; thence—

(2) By a straight line 172′ more or less to the N. western end of retaining wall; thence,

(3) 195′ more or less along retaining wall as said wall runs to point; thence

4 (4) N. 80° 49 W.—632′ more or less, along a line parallel to the center line of Franklin St. to point of beginning. See Blue Print Exhibit A hereto attached."

b. That said blue print, Exhibit A, is a true and correct delineation of the said premises in respect not only of its metes and bounds, but in respect of its relation to the Potomac River and of the territory of the State of Virginia adjacent to the waters of said river.

c. That the whole of the area, described by metes and bounds in the declaration, lies within the original boundary lines of the District of Columbia, located and established by the Proclamation of

the President of the United States, on March 30, 1791, and lies northward of the second line located and established by said Proclamation, as beginning at Jones's Point (being the upper cape of Hunting Creek), and running at a right angle with the first line in said Proclamation, located and established, across the Potomac ten miles, and within and eastward of the line of mean high-water on the right or western bank of the Potomac River, as it existed on and prior to the 19th day of December, 1791.

d. That from the 19th day of December, 1791, down to the 6th day of September, 1910, the whole of the area described by metes and bounds in said declaration was submerged land, covered by the waters of the Potomac River within the natural ebb and flow of the tide and below mean high-water line on the right or western bank of said river, and the soil within the said area was submerged soil, constituting a portion of the bed and shore of the said River within and below said mean high-water line.

e. The act of Congress entitled, "An Act Making Appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved, June 25, 1910, (36 Stat. L., ch. 382, p. 630) contained the following provision:

"Improving Potomac River at Alexandria, Virginia, in accordance with the report submitted in House Document Numbered Twelve hundred and fifty-three, Sixtieth Congress, second session, sixty thousand dollars."

f. The act of Congress entitled, "An Act Making Appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved, February 27, 1911 (36 Stat. L., ch. 166, p. 933), contained the following provision:

"Improving Potomac River at Alexandria, Virginia: Completing improvement, fifty-six thousand dollars."

g. That by virtue, and in pursuance, of the foregoing provisions of the acts of Congress aforesaid, the United States, by the Secretary of War, acting through the Chief of Engineers and the Engineer Officer in charge of the United States Engineer Office at Washington, D. C., in the course of the work of improving the Potomac River by deepening the channel thereof in accordance with the report submitted in House document numbered 1253, Sixtieth Congress, Second Session, and in execution of the improvement so authorized, caused a ripap wall to be constructed on
5 the submerged soil constituting the bed of the Potomac River and below mean low-water mark, extending from a point at or near a line drawn from Lee Street on the south line of Franklin Street when extended and projected into the river Potomac, in a southerly direction to Jones's Point, at low-water mark, and in the course of said work of improving the said Potomac River by deepening the channel thereof, caused the material dredged from the bed

of the channel of said river to be deposited on the submerged land, behind and westward of said riprap wall and between the same and the high-water mark in the area described by metes and bounds in the declaration as part of a larger area between said riprap wall and the line of mean high-water on the right or western bank of said river, and causing the same to become fast land immediately contiguous on the northwestern and western boundaries to the fast land of the State of Virginia.

h. That the work of constructing said riprap wall was begun on the 6th day of September, 1910, and completed on the 26th day of April, 1911; that the work on said wall was begun at the north end thereof in the vicinity of the shipyard at a point lying in or near a line drawn from Lee Street on the south line of Franklin Street when extended and projected into the river Potomac, and extended southward to Jones's Point; that said wall was built up to about five feet above mean low-water mark, forming a revetment against the swells of boats, wave action and freshets; and that by December 17, 1910, the work on said wall had been so far completed that ordinary access to navigation from the upland, which the defendant claimed to own above high-water line, had been cut off from so much of the front thereof, as lies southward of the north end of said wall, and is contiguous to the premises claimed and described in the declaration herein.

i. That the work of filling in the area between said riprap wall and the mean high-water mark on the right or western bank of the river, by the deposit of the material dredged from the bed of the channel of said river, was begun on March 4, 1911, and was completed on December 29, 1912; that at the date of the commencement of the building of said riprap wall the average depth of water within the area aforesaid in front of the upland claimed to be owned by the defendant, The Marine Railway & Coal Company, Incorporated, was one and one-half feet at mean low-water, that the mean range of tide was three feet, and that there were, at that date, no existing structures of any kind extending from the defendant's upland beyond the mean high-water mark and within the area enclosed and reclaimed.

j. That none of the area filled in and reclaimed extends above or inside of the mean high-water line on the right or western bank of the Potomac River as it existed at the date when the work upon said riprap wall was begun; and that the whole of said reclaimed area lies below and outside of the mean low-water line as it existed on said date, except so much of such reclaimed area as is shown on the plat herewith filed, marked "B," as lying northward and westward of the dotted line thereon designated as the mean
6 low-water shore line, which said dotted line correctly represents the mean low-water line as it existed on said date.

k. That beginning on January 8, 1912, the United States caused a fence, enclosing said reclaimed area, together with sign boards

ailed to the posts thereof notifying all persons that said land was overnment property and that trespassers would be prosecuted, to e constructed along, and following, the high-water line as it ex-ted immediately prior to said reclamation; that on the night of anuary 8th, or the early morning of January 9, 1912, a portion f said fence about 200 feet in length, separating said reclaimed rea from the upland, claimed to be owned by the defendant above rea mentioned in the declaration from the upland above the orig-al high-water mark, claimed to be owned by the defendant; and hat prior to the destruction of said fence, no attempt had been ade by the defendant to exercise dominion or possession over the id reclaimed area.

II.

On behalf of the Marine Railway and Coal Company, Incorporated, he following is offered in evidence:

a. That prior to the beginning of the improvement aforesaid, on he sixth day of September, 1910, the area described, by metes and ounds, in said declaration formed a portion of Potomac River, nown as "Battery Cove."

Plats and Surveys of River Front, Alexandria, 1748 *to* 1909.

b. That the following plans, plats and surveys showing the loca-ion of the said area, filed herewith, are genuine originals, or cor-ect and authenticated copies of the originals made at the dates re-pectively specified:

1. Plan of the Town of Alexandria made in 1749.

2. A plat, made prior to March 4, 1804, of the lands of John ill, as laid out and sold by William MacCreery and James H. ooe, assignees under a commission of bankruptcy, presented to he Circuit Court of the District of Columbia for the county of lexandria on March 4, 1804, purporting to show the wharf lines n the Potomac River at the date of said plat.

3. Plat of the territory to show Jones's Point, Lumley Point and oint West in 1748.

4. Plat of the Potomac River at Alexandria, Virginia, and made n compliance with the requirements of the River and Harbor Act f March 2, 1907, November 1907, and March, 1908, showing the ulkhead line from the extreme end of Jones's Point to the City of lexandria.

5. Copy of plat and survey No. 4, on which is indicated the loca-tion of the retaining wall built by the United States Govern-ment inside of the bulkhead line referred to in the preceding plat, also showing the location of point Lumley and Point est as they were laid down on the original plan of Alexandria in 1748.

6. Chart of the head of navigation of the Potomac River showing the route of the Alexandria Canal, made in pursuance of a resolution of the Alexa. Canal Company, Oct. 1838, compiled from the surveys of Lt. Col. Kearney, Major Turnbull, U. S. T. E.; W. M. C. Fairfax; M. C. Ewing, Civ. Engrs., W. J. Stone, S. C., Wash., D. C., on which is indicated the Potomac River at Washington, Georgetown and Alexandria.

7. Plan of the Town of Alexandria, D. C., with the Environs, made by Maskell C. Ewing, Civil Engineer, 1845.

8. Chart of Potomac River (Sheet No. 4), from Indian Head to Georgetown, made, under the direction of A. D. Bache, Superintendent of the Survey of the Coast of the United States, in 1864.

History of Battery Cove and Alexandria River Fronts.

c. That the records of Alexandria and Fairfax County, indicate that at the time Alexandria was laid out in 1748, a cove extended from Jones's Point to Point Lumley, the said Cove at the extreme inside point extended as far west as Lee Street in the plan of the town of Alexandria, and that as early as 1785, the land upon which is located the present shipyard of the defendant, as also other lots to the northward of the shipyard to Point Lumley, were filled in and made land; That the filling in of the land where the shipyard is located was done prior to 1789, is shown by deed dated April 1st, 1785, from William Alexander and William Gibbon Stuart, surviving Executors of John Alexander, deceased, to John Harper, Liber B, page 107, and deed from William T. Alexander to John Harper, dated September 23, 1789, recorded Liber D, page 54; and that so much of Union Street in the City of Alexandria as extends between Point Lumley and the south line of the shipyard property, was filled in at the same period and opened as a street in the town of Alexandria.

d. That it appears, from the original plan of the town of Alexandria (Plat No. 1), and the lines drawn upon Plat No. 5, showing the present location of the original river line between Point Lumley and Point West, or West Point, that there was another indentation in the shore line, or cove, in front of Alexandria, north of what is known as Battery Cove, and between Point Lumley and Point West, the last mentioned cove at its extreme inside point being as far west as the west side of the present Lee Street in the City of Alexandria, and that between the shore line in 1748, from Point Lumley to Point West, and the present shore line for the whole distance from Point Lumley to Point West, nearly two blocks, including Union Street, is made ground, by filling in of the last named cove, and that this ground is shown by the records of Alexandria and Fairfax Counties to have been filled in and made some time

prior to 1789, as shown by deed of Dennis Ramsey to Isaac
8 Little, dated December 16, 1789, Liber C, page 288, and that other deeds and conveyances were recorded in Fairfax and Alexandria.

e. That it appears from the records of Alexandria County, that Jones' Point, was conveyed, by that name, by Wm. Thornton Alexander and wife to Stephen Cooke, December 27, 1794, Liber G, page 54; and was conveyed to the Manassas Gap Railroad by sundry mesne conveyances, and is now held by the Southern Railway Company, under claim of title in fee, except 3,000 square feet thereof conveyed to the United States, for the Jones' Point Light House, April 3, 1855, Liber Q, No. 3, page 377.

f. That it also appears by the records of Fairfax and Alexandria Counties, that the Trustees of the town of Alexandria, leased to Robert T. Hooe, Richard Harrison and J. W. Harrison, on December 1st, 1780, all that part of Point Lumley in Alexandria, beginning on the south side of Duke Street east of the corner of lot 77 that points northeast, owned by Thos. Fleming, thence south parallel to Union Street 121 feet, or thereabouts, to the ground leased by the Trustees of Alexandria to Thomas Fleming; thence east into the river; thence north with the river to Duke Street, and west to the beginning, for a term of twenty-one years from October 1, 1780; and that by deed of June 10th, 1785, recorded Liber B, page 153, Alexandria records, Robert T. Hooe and Richard Harrison, conveyed to Wm. Hartshorn, that part of the leasehold beginning on Duke Street at the east end of the scale house erected by Hooe and Harrison; thence east on Duke Street 75 feet; south parallel to Union Street 25 feet; west parallel to Duke Street 75 feet, and north to the beginning; it also appears from deed dated January 17th, 1794 (Liber F, page 294 Alexandria records) that on March 29, 1774, the Trustees of the town of Alexandria leased to Thomas Fleming, for a term of 63 years, a part of the ground appropriated to the use of the town upon Point Lumley, adjoining the ground owned by Thomas Fleming, being a part of lot 77 in the plan of the town, and to extend from his ground 25 feet in front north, and from thence east that breadth into the Potomac river; and that said leasehold was sold to Robert Townsend Hooe, the lots so leased being described as beginning at the north line of lot 77, 136 feet, 1 inch east of Union Street; thence north 25 feet, and thence east into the Potomac river; and that the Mayor and Commonalty of Alexandria, and the Executor of Thomas Fleming, deceased, conveyed to Robert T. Hooe the unexpired part of said lease, 44 years; and that on February 26th, 1853 (Liber O, No. 3, page 317, Alexandria records), the Common Council of Alexandria leased to Wm. H. and George D. Fowle, a lot of ground beginning at the intersection of the south side of Duke Street with the east side of Potomac Strand; thence east into the Potomac river; and from thence returning to the beginning point, and running thence with the east side of Strand 145 feet, 7 inches; thence east parallel to Duke Street into the river, and north to connect with the first

line, with the use of the said Strand, for a term of 99 years beginning February 26, 1853, upon condition that the lessee build a Flouring Mill upon the said premises within one year, to cost
9 not less than Fifty Thousand Dollars; That the said Strand referred to in said lease is located 180 feet east of the east line of Union Street, and that said Strand is 20 feet wide, and that the said mill was erected on Point Lumley sometime during the year 1853, and is now known as the Pioneer Mills, and is shown by plat No. 12.

Explanation of Landmarks, etc.

g. That "Mussell Creek" mentioned in the John Matthews grant, is the same as Indian Cabin Creek, mentioned in the grant to Robert Howsing, and now known as Great Hunting Creek; that the grant by Governor Berkeley of Virginia to Robert Howsing in 1669, of six thousand acres, included the whole of the city of Alexandria and purports to show the river front of said grant on the Potomac river from a point opposite Analostan Island to Jones Point at the north intersection of Hunting Creek and the Potomac river; that Indian Cabin Creek referred to in the grant to Robert Howsing, is now known as Great Hunting Creek, and has been so known for over a hundred years, as appears by the records of Alexandria and Fairfax Counties; that the north point of the Creek named by the English Indian Cabin Creek, as set forth in said grant, and designated on plat No. 16 as B. Piper's Island is the same as Jones' Point and has been known by the latter name for over a hundred years, as appears by the records of Alexandria County; That the headland shown on plat No. 16 as Hugh West's Hunting Creek Warehouse, is intended to represent the same location and point of land known as Point West, and designated on plat No. 1 as West Point; on plat No. 2 as Ferry, and on plats Nos. 3 and 5 as Point West and Alexandria Fertilizer & Chemical Co., and on plat No. 4 as the property of the Alexandria Fertilizer & Chemical Company; That the point of land designated on plat No. 1 as Point Lumley, is the same land designated on plat No. 2 as How's Wharf and Hamilton's Wharf, and on plats 3 and 5 as Point Lumley and Pioneer Mill, and on plat 4 as Pioneer Mill.

That the point designated on Plat No. 6 as "Keith's" is the same property as that now owned by the defendant, the Alexandria Marine Railway & Coal Co., Inc.; and the point on said Plat 6 designated as "County Wharf" is in substantially the same location as that designated as Point West on Plat No. 1 and other plats aforementioned, and designated as the property of the Alexandria Fertilizer & Chemical Company on other plats hereinbefore mentioned; that the point designated as "Fish Wharf" on Plat No. 7 is the same property designated on Plat No. 1 and other plats heretofore mentioned as Point West, and the same property as designated on other plats heretofore mentioned as the property of the Alexandria Fertilizer & Chemical Company; that the street designated Water Street on Plats 1, 2, and 7, in the several plans of the town of Alexandria, is the

same as the Street designated Lee Street on plats 3, 4, 5, and 11, the name of the Street having been changed by ordinance of the city of Alexandria from Water Street to Lee Street; that plat 1 shows the original plan of Alexandria and the purported line of the Potomac river front of said city in 1748; that plats 2, 3, 4, 5, 6, and 7 show the plan of the city of Alexandria as the city has been enlarged since 1748, up to the present time, and the changes in the line of the river front of said city from 1748 up to the present time; that the distance from the east side of Lee Street to the west side of Union Street is 300 feet; that Union Street is 50 feet wide; that Potomac Strand or Strand Street runs from the south side of Duke Street to Wolfe Street; that the west line of said Potomac Strand or Strand Street is 180 feet east of Union Street, and that said Potomac Strand or Street is 20 feet in width, and runs parallel to Union Street and the Potomac River, and that Point Lumley, now the Pioneer Mills, lies east of the Potomac Strand or Strand Street.

That from and after the time the filling-in, above described, was made, up to the time of the cession of the County of Alexandria to the United States, the State of Virginia exercised jurisdiction over the land made, as being within its boundaries, and all conveyances relating to the same were recorded at the city of Alexandria and in the County of Fairfax, Virginia; and that from the date of the retrocession of Alexandria by the United States Government to the State of Virginia in 1846, all the made ground aforesaid, has been treated as a part of the State of Virginia, it has exercised jurisdiction over the same, levied and collected taxes thereon, and all conveyances relating to the same have been recorded in the city of Alexandria up to the present time.

III.

On behalf of the United States, the following is offered in evidence:

Charter of Mœryland, 1632.

a. The charter of Maryland granted on June 20, 1632, by Charles 1st to Cecilius Calvert, Lord Baltimore, son and heir of George Calvert. Said charter granted to the said "Baron of Baltimore, his heirs and assigns, all that part of the peninsula, or chersonese, lying in the parts of America, between the ocean on the east, and the bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory, or head-land, called Watkin's Point, situate upon the bay aforesaid, near the river of Wighco, on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north which lieth under the fortieth degree of north latitude from the aquinoctial, where New England is terminated: And all the tract of that land within the metes underwritten, (that is to say,) going from the said estuary called Delaware Bay in a right line in the de-

gree aforesaid to the true meridian of the first fountain of the river Potomac, then tending downward towards the south to the farther bank of the said river and following it to where it faces the western and southern coasts as far as to a certain place called Cinquack situate near the mouth of the same river where it discharges itself in the aforenamed bay of Chesapeake and thence by the shortest
11 line as far as the aforesaid promontory or place called Watkin's Point." (217 U. S. 25.)

"Sec. XXI. And furthermore we will, and by these presents for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, and to the freeholders and inhabitants of the said province, both present and to come, and to every of them, that the said province, and the freeholders or inhabitants of the said colony or country, shall not henceforth be held or reputed a member or part of the land of Virginia, or of any other colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of government, from which we do separate both the said province, and inhabitants thereof, and by these presents do will to be distinct, and that they may be immediately subject to our crown of England, and dependent on the same forever." (1 Kilty's Laws of Maryland, Sec. XXI.)

b. From the date of the granting of the charter of 1632 to Lord Baltimore until the outbreak of the American Revolution, the successive Lord Proprietaries and the Assembly of Maryland continually claim and assert that the whole river Potomac is within the limits of Maryland, as described in the Royal Charter to Cecilius, Baron of Baltimore.

(1) In pursuance thereof, all of the islands in the said river granted to private individuals were held by patent from the Maryland Land Office. Among the islands so patented is the island within the present limits of the District of Columbia, known as "Analostan Island."

(*a*) The return of the survey of this island, made by Richard Edelen, Deputy Surveyor, under a special warrant from the Lord Proprietary, dated July 21, 1680, to Capt. Randolph Brandt, is as follows:

"MARYLAND, *sct:*

To the Right Hon'ble, the Lord Propr'e'y:

In obedience to a special warrant from his Lordship bearing date the 21st of July 1680 granted unto Capt. Randolph Brandt of Charles County upon a petition—These are in humble manner to certify that I Richard Edelen Deputy Sur. for St. Marys County under the Honble. Vincent Lowe, Esq. Sur. Gen'l of this Province and in reference to a warrant granted the said Brandt bearing date the twenty seventh day of April last past for two hundred acres have laid out for the said Brandt one certain parcel of land being an Island lying in

Potomac River near the falls of said River over against Rock Creek in Charles County commonly called or known by the name of the Analostan Island containing by estimation seventy-five acres more or less—To be held of Zachiah Manor called Barbadoes—Certified this twenty ninth day of April Anno Dom.—1682.

RICHARD EDELEN

Marginal Note on Record—as follows—
Randolph Brandt
Cert., 75 acres—
Pat. A. C. No. 3.48
Rent 3½ pounds
Barbadoes."

(*b*) The following entries, appearing upon the Rent Rolls of the Lord Proprietary; viz:

"Acres 75-0:	Rent 3:0:	'Barbadoes' Sur. 29 April 1682, for Randolph Bandt being an Island in Potomac River near the Falls over against Rock Creek—Poss'r 75: 0" 3" 0 * * * widow Mason.
75, ,	3, ,	'Barbadoes' Sur. 29 April 1682, for Randolph Brand being an Island in Potomack near the falls over against Rock Creek *Commonly* called Annacostian Island—Poss'r Rand: Brand in Virga.
75:	3	George Mason from Francis Hammersly 28th Augt. 1717."

(2) In June, 1770, several vessels were seized in the Potomac River by Capt. Sir Thomas Adams, of the Frigate "Boston," and taken to Virginia, to be tried in the Court of Vice Admiralty in that colony. Robert Eden, Lieutenant Governor of the Province of Maryland, addressed and sent by Thomas Jennings, Attorney General of the Province of Maryland, to Lord Bottetourt, Governor of Virginia, a remonstrance against the seizure of such vessels, asserting that "I need not inform your Lordship that the whole River Potowmack is within the Limits of Maryland as described in the Royal Charter from His Majesty King Charles the First to the Right Honourable Cecilius Baron of Maryland, Ancestor of the present Lord Proprietary," and protesting against the proposed assumption of jurisdiction of the Admiralty Court in Virginia as an infringement of the charter rights.

Mr. Attorney General Jennings reported that he had been informed by the Judge of the Court of Admiralty that it was the opinion of His Majesty's Advocate that the proceedings in this instance were unjustifiable, and, therefore, nothing further would be done in prosecution of the affair, and that the commander of the ship had declared his consciousness of the impropriety of the seizures and had given directions for the vessels to be released, which had been immediately put into the possession of their owners.

(32 Arch. Md., Proc. Coun. (1761-1770), pp. 371, 375, 378.)

Act of Maryland, June 22, 1768.

(3) On June 22, 1768, the Assembly of Maryland passed "An Act to prevent any obstruction of the navigation in the river Patowmack" (1 Kilty's Laws of Maryland, 1768, ch. V), which provided, among other things, "That all fish-dams, or other devices for catching of fish, already made, or hereafter to be made, and all other
13 erections hereafter to be made, in the river Patowmack, between the Great Falls and Wills's creek, or in the river Monococy below the dividing thereof into the two Pipe creeks, shall be and are hereby deemed and declared nuisances, and may, by any person or persons, be pulled down, prostrated and abated as such; and that no person or persons whatsoever shall hereafter put, place or erect, any such fish-dam, or place or make any heap of stones, or other erection whatsoever, within the said parts of either of the said rivers, under the penalty of fifteen pounds current money for every such offence."

c. Upon the American Revolution all rights of property, as well as of sovereignty, including the waters and soil of navigable rivers, conferred upon Lord Baltimore and his successors by the charter of June 20, 1632, devolved upon and became vested in the people of Maryland and the government ordained by them.

d. At the Convention of the delegates of Maryland, assembled for the purpose of forming a new constitution of government, the following action was taken and resolutions passed:

October 29, 1776.

"This convention being informed, that in the constitution or form of government agreed to by the delegates of Virginia, a claim is made by them injurious to the inhabitants of this state,

ORDERED, That the same be read, and the same was read as follows, to wit:

'The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South-Carolina, are hereby ceded, released, and for ever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and govrnment, and all other rights whatsoever, which might at any time hereafter have been claimed by Virginia, except the free navigation and use of the rivers Patowmack and Pocomoke, with the property of the Virginia shores or strands, bordering on either of the said rivers, and all improvements which have been or shall be made thereon. * * *'

"RESOLVED, That this convention will on to-morrow resolve itself into a committee of the whole, to take the same into consideration."

October 30, 1776.

"The convention, according to the order of the day, resolved itself into a committee of the whole, on that part of the constitution of Virginia, which was referred to their consideration; Mr. T. Wright in the chair. After some time spent therein, Mr. President resumed the chair, and Mr. Wright reported, that the committee had, according to order, taken the same into consideration, and had come to several resolutions thereon, which he read in his place and afterwards delivered in at the table, where the same were again twice read, amended, and agreed to as follow:

"RESOLVED *unanimously*, That it is the opinion of this convention, that the state of Virginia hath not any right or title to any of the territory, bays, rivers, or waters, included in the charter granted by his majesty Charles the first, to Caecilius Calvert, baron of Baltimore.

"RESOLVED *unanimously*, That it is the opinion of this convention, that the sole and exclusive jurisdiction over the territory, bays, rivers and waters, included in the said charter, belongs to this state; and that the river Patowmack, and almost the whole of the river Pocomoke, being comprehended in the said charter, the sole and exclusive jurisdiction over the said river Patowmack, and also over such part of the river Pocomoke as is comprehended in the said charter, belongs to this state; and that the river Patowmack, and that part of Chesapeake bay which lies between the capes and the south boundary of this state, and so much thereof as is necessary to the navigation of the rivers Patowmack and Pocomoke, ought to be considered as a common highway, free for the people of both states, without being subject to any duty, burthens or charge, as hath been heretofore accustomed."

Hanson's Laws of Maryland (1787)—Proceedings of Convention held at Annapolis, 14th of August, 1776.

Proceedings of Conventions of the Province of Maryland, held at the city of Annapolis in 1774, 1775 and 1776, pp. 291, 293.

Maryland Act of Cession, 1788.

An Act of the General Assembly of Maryland, December 23rd, 1788, which enacted,—

"That the representatives of this state in the house of representatives of the congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be, and they are hereby authorised and required, on the behalf of this state, to cede to the congress of the United States any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States." (2 Kilty's Laws of Maryland, ch. XLVI.)

Act of Congress, 1790, Accepting Maryland Cession.

f. Act of Congress, July 16th, 1790, Section 1, which provided,—

"That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States. Provided nevertheless, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide."

This Act provides for the appointment by the President of three commissioners to survey and by proper metes and bounds define and limit a district of territory under the limitations above mentioned, and then makes suitable provision for laying out of the
15 territory and the purchase of necessary lands for the use of the government, and to provide suitable buildings for Congress, the President, and for public offices.

(1 U. S. Stat. L., ch. 28, sec. 1, p. 130.)

Act of Congress, 1791, Amending and Repealing in Part Act 1790.

g. Act of Congress of March 3rd, 1791, which provided—

"That so much of the act, intitled 'An act for establishing the temporary and permanent seat of the government of the United States,' as requires that the whole of the district of territory, not exceeding ten miles square, to be located on the river Potomac, for the permanent seat of the government of the United States, shall be located above the mouth of the Eastern Branch, be and is hereby repealed, and that it shall be lawful for the President to make any part of the territory below the said limit, and above the mouth of Hunting Creek, a part of the said district, so as to include a convenient part of the Eastern Branch, and of the lands lying on the lower side thereof, and also the town of Alexandria, and the territory so to be included, shall form a part of the district not exceeding ten miles square, for the permanent seat of the government of the United States, in like manner and to all intents and purposes, as if the same had been within the purview of the above recited act: *Provided*, That nothing herein contained, shall authorize the erection of the public buildings otherwise than on the Maryland side of the river Potomac, as required by the aforesaid act." (1 U. S. Stat., ch. XVII, pp. 214-215.)

President's Proclamation, 24th Jan'y, 1791.

h. January 24, 1791, the proclamation of the President:

"Now, therefore, in pursuance of the powers to me confided, and after duly examining and weighing the advantages and disadvan-

tages of the several situations within the limits aforesaid, I do hereby declare and make known that the location of one part of the said district of 10 miles square shall be found by running four lines of experiment in the following manner, that is to say: Running from the court-house of Alexandria, in Virginia, due southwest half a mile, and thence a due southeast course till it shall strike Hunting Creek, to fix the beginning of the said four lines of experiment.

Then beginning the first of the said four lines of experiment at the point on Hunting Creek where the said southeast course shall have struck the same, and running the said first line due northwest 10 miles, thence the second line into Maryland due northeast 10 miles; thence the third line due southeast 10 miles, and thence the fourth line due southwest 10 miles to the beginning on Hunting Creek.

And the said four lines of experiment being so run, I do hereby declare and make known that all that part within the said four lines of experiment which shall be within the State of Maryland and above the Eastern Barnch, and all that part within the same four lines of experiment which shall be within the Commonwealth of Virginia and above a line to be run from the point of land forming the upper cape of the mouth of the Eastern Branch due southwest, and no more, is now fixed upon and directed to be surveyed, defined, limited, and located for a part of the said district accepted by the said act of Congress for the permanent seat of the government of the United States (hereby expressly reserving the direction of the survey and location of the remaining part of the said district to be made hereafter contiguous to such part or parts of the present location as is or shall be agreeable to law,)" and directs the Commissioners before appointed to run the said lines and to make report to the President.

(Messages and Papers of the Presidents (1789-1897), Richardson, vol. 1, pp. 100-101.)

President's Proclamation, 30th March, 1791.

The proclamation of the President of March 30, 1791:

"Now, therefore, for the purpose of amending and completing the location of the whole of the said territory of 10 miles square in conformity with the said amendatory act of Congress, I do hereby declare and make known that the whole of the said territory shall be located and included within the four lines following, that is to say: Beginning at Jones's Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of 45 degrees west from the north, and running in a direct line 10 miles for the first line; then beginning again at the same Jones's Point and running another direct line at a right angle with the first across the Potomac 10 miles for the second line; then from the termination of the said first and second lines running two other direct lines of 10 miles each, the one

crossing the Eastern Branch aforesaid and the other the Potomac and meeting each other in a point.

And I do accordingly direct the commissioners named under the authority of the said first-mentioned act of Congress to proceed forthwith to have the said four lines run, and by proper metes and bounds defined and limited, and thereof to make due report under their hands and seals; and the territory so to be located, defined, and limited shall be the whole territory accepted by the said acts of Congress as the district for the permanent seat of the Government of the United States.

(Messages and Papers of the Presidents (1789-1897), Richardson Vol. 1, pp. 102-103.)

Act of Maryland, Dec., 1791, *Confirming Cession.*

j. December 19, 1791, Act of the General Assembly of Maryland in regard to the cession to the United States, confirming all things done in pursuance of the original act of Cession authorized to be made through its members in Congress, Section 2 of which provides:

"BE IT ENACTED, *by the General Assembly of Maryland*, That all that part of the said territory, called Columbia, which lies within the limits of this state, shall be and the same is hereby acknowledged to be for ever ceded and relinquished to the congress and government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside, thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of government of the United States; provided, that nothing herein contained shall be so construed to vest in the United States any right of property in the soil, as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States; and provided also, that the jurisdiction of the laws of this state, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until congress shall by law provide for the government thereof, under their jurisdiction, in manner provided by the article of the constitution before recited. (2 Kilty's Laws of Maryland, chap. XLV, sec. II.)

Act of Congress, 1801, *Extending Jurisdiction Over Ceded Territory*

k. Act of Congress, approved February 27th, 1801, entitled: "An Act concerning the District of Columbia," which provides as follows:

"Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the laws of the state of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia, which was ceded by the said state to the United States, and by them accepted for the permanent seat of government; and that the laws of the state of Maryland, as they now exist, shall be and continue in force in that

part of the said district, which was ceded by that state to the United States, and by them accepted as aforesaid.

Sec. 2. *And be it further enacted*, That the said district of Columbia shall be formed into two counties; one county shall contain all that part of said district, which lies on the east side of the river Potomac, together with the islands therein, and shall be called the county of Washington; the other county shall contain all that part of said district, which lies on the west side of said river, and shall be called the county of Alexandria; and the said river in its whole course through said district shall be taken and deemed to all intents and purposes to be within both of said counties.

Sec. 3. Be it further enacted, That there shall be a court in said district, which shall be called the circuit court of the district of Columbia; and the said court and the judges thereof shall have all the powers by law vested in the circuit courts and the judges of the circuit courts of the United States. Said court shall consist of one chief judge and two assistant judges resident within said district, to hold their respective offices during good behaviour; any two of whom shall constitute a quorum; and each of the said judges shall, before he enter on his office, take the oath or affirmation provided by law to be taken by the judges of the circuit courts of the United States; and said court shall have power to appoint a clerk of the court in each of said counties, who shall take the oath and give a bond with
17 sureties, in the manner directed for clerks of the district courts in the act to establish the judiciary of the United States.

Sec. 4. *Be it further enacted*, That said court shall, annually, hold four sessions in each of said counties, to commence as follows, to wit: for the county of Washington, at the city of Washington, on the fourth Mondays of March, June, September and December; for the county of Alexandria, at Alexandria, on the second Mondays of January, April, July, and the first Monday of October.

Sec. 5. *Be it further enacted*, That said court shall have cognizance of all crimes and offences committed within said district, and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States.

Sec. 6. *Provided, and be it further enacted*, That all local actions shall be commenced in their proper counties, and that no action or suit shall be brought before said court, by any original process against any person, who shall not be an inhabitant of, or found within said district, at the time of serving the writ.

Sec. 7 *Be it further enacted*, That there shall be a marshal for the said district, who shall have the custody of the gaols of said counties, and be accountable for the safe keeping of all prisoners legally com-

mitted therein; and he shall be appointed for the same term, shall take the same oath, give a bond with sureties in the same manner, shall have generally, within said district, the same powers, and perform the same duties, as is by law directed and provided in the case of marshals of the United States.

Sec. 8. *Be it further enacted*, That any final judgment, order or decree in said circuit court, wherein the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the supreme court of the United States, by writ of error or appeal, which shall be prosecuted in the same manner, under the same regulations, and the same proceedings shall be had therein, as is or shall be provided in the case of writs of error on judgments, or appeals upon orders or decrees, rendered in the circuit court of the United States.

Sec. 9. *Be it further enacted*, That there shall be appointed an attorney of the United States for said district, who shall take the oath and perform all the duties required of the district attornies of the United States; and the said attorney, marshal and clerks, shall be entitled to receive for their respective services, the same fees, perquisites and emoluments, which are by law allowed respectively to the attorney, marshal and clerk of the United States, for the district of Maryland.

Sec. 10. *Be it further enacted*, That the chief judge, to be appointed by virtue of this act, shall receive an annual salary of two thousand dollars, and the two assistant judges, of sixteen hundred dollars each, to be paid quarterly, at the treasury of the United States.

Sec. 11. *Be it further enacted*, That there shall be appointed
18 in and for each of the said counties, such number of discreet persons to be justices of the peace, as the President of the United States shall from time to time think expedient, to continue in office five years; and such justices, having taken an oath for the faithful and impartial discharge of the duties of the office, shall, in all matters, civil and criminal, and in whatever relates to the conservation of the peace, have all the powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws herein before continued in force in those parts of said district, for which they shall have been respectively appointed; and they shall have cognizance in personal demands to the value of twenty dollars, exclusive of costs; which sum they shall not exceed, any law to the contrary notwithstanding; and they shall be entitled to receive for their services the fees allowed for like services by the laws herein before adopted and continued in the eastern part of said district.

Sec. 12. *And be it further enacted*, That there shall be appointed in and for each of the said counties, a register of wills, and a judge to be called the judge of the orphan's court, who shall each take an oath for the faithful and impartial discharge of the duties of his office; and shall have all the powers, perform all the duties, and receive the like

fees, as are exercised, performed, and received, by the registers of wills and judges of the orphans' court, within the state of Maryland; and appeals from the said courts shall be to the circuit court of said district, who shall therein have all the powers of the chancellor of the said state.

Sec. 13. *And be it further enacted*, That in all cases where judgments or decrees have been obtained, or hereafter shall be obtained, on suits now depending in any of the courts of the commonwealth of Virginia, or of the state of Maryland, where the defendant resides or has property within the district of Columbia, it shall be lawful for the plaintiff in such case upon filing an exemplification of the record and proceedings in such suits, with the clerk of the court of the county where the defendant resides, or his property may be found, to sue out writs of execution thereon, returnable to the said court, which shall be proceeded on, in the same manner as if the judgment or decree had originally been obtained in said court.

Sec. 14. *And be it further enacted*, That all actions, suits, process, pleadings, and other proceedings of what nature or kind soever, depending or existing in the courts of Hustings for the towns of Alexandria and Georgetown, shall be, and hereby are continued over to the circuit courts to be holden by virtue of this act, within the district of Columbia, in manner following; that is to say; all such as shall then be depending and undetermined, before the court of Hustings for the town of Alexandria, to the next circuit court hereby directed to be holden in the town of Alexandria; and all such as shall then be depending and undetermined, before the court of Hustings for Georgetown, to the next circuit court hereby directed to be holden in the city of Washington: *Provided nevertheless*, that where the personal demand in such cases, exclusive of costs, does not exceed the value of twenty dollars, the justices of the peace within their respective counties, shall have cognizance thereof.

19 Sec. 15. *And be it further enacted*, That all writs and processes whatsoever, which shall hereafter issue from the courts hereby established within the district, shall be tested in the name of the chief judge of the district of Columbia.

Sec. 16 *And be it further enacted*, That nothing in this act contained shall in any wise alter, impeach or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown, or of any other body corporate or politic, within the said district, except so far as relates to the judicial powers of the corporations of Georgetown and Alexandria."

(2 U. S. Stat. L., ch. 15, pp. 103-108.)

Jurisdiction Over the Long Bridge.

l. (1) The act of Congress, approved February 5, 1808 (2 U. S. Stat., ch. 15, p. 457). This act provided for the creation of a corporation by the name of "The Washington Bridge Company," for the

purpose of erecting a bridge over the river Potomac between the City of Washington and Alexander's Island, the said bridge to be erected and built between the termination of Maryland Avenue and Alexander's Island.

(2) In pursuance of the act aforesaid, The Washington Bridge Company was duly organized and did, in the year 1809, construct a bridge, as described in said act, across the Potomac River between the termination of Maryland Avenue and Alexander's Island. This bridge was partially destroyed by a freshet in 1831.

m. (1) The act of Congress, approved July 14, 1832 (4 U. S. Stat. ch. 225, p. 582). An Act entitled, "*An Act providing for the purchase by the United States of the rights of the Washington Bridge Company, in the District of Columbia, and for the erection of a public bridge on the site thereof.*

Whereas it is represented to this present Congress, that the Washington Bridge Company are willing and desirous to sell, convey, and transfer to the United States, the bridge by them owned, in its present condition, with all their rights, property, and privileges, as a company, under the existing laws, including their lands, piers, abutments, roads, and ways, as well as all materials by them owned at the site of the said bridge, whether worked up in the construction or reconstruction of the same or not, for the sum of twenty thousand dollars:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That provided the said Washington Bridge Company shall, at a lawful meeting of the stockholders thereof, agree to convey, and shall actually convey to the United States, the said bridge as it now is, with all the estate, right, title, and interest, either in law or equity, by them owned, as a company under existing laws, in said bridge, with its piers, abutments, roads and ways, together with all the materials by them now owned as a company, at the said bridge and ways, either worked up or not, in the construction or re-construction of the said bridge, and all other their rights, privileges, and immunities as such company, within two calendar months from the passing of this act; which conveyance the said company is hereby authorized and empowered to make, by deed, under their corporate seal, to be deposited with the Secretary of the Treasury of the United (States;) then the said secretary shall be, and he hereby is, authorized and required to pay to the said company the sum of twenty thousand dollars, out of any moneys in the treasury not otherwise appropriated.

Sec. 2. *And be it further enacted,* That upon the execution of such conveyance by the said company, the President of the United States be, and he is hereby authorized to cause to be erected upon the site of the present bridge, a good and sufficient bridge across the river Potomac, of such materials, and upon such plan of construction as he shall approve and direct: *Provided,* That the said bridge be so constructed as to have a draw therein suitable for the

safe passage of vessels of the largest dimensions, capable of navigating the Potomac river above the said bridge, not less than sixty-six feet at the least; and, also, on each side of the said draw, and at a suitable distance therefrom, an arch of sufficient elevation to admit the passage under the same of an ordinary steamboat; which said draw and arch shall be at the Virginia channel in the said river: *And provided, further,* That there shall be a similar draw at the Maryland channel, of not less than thirty-five feet, with a similar arch: *And, provided, also,* That in the selection of materials and in the construction of the said bridge, draws and arches, all practicable attention shall be had to the preservation of the navigation of the said river.

Sec. 3. *And be it further enacted,* That towards the construction of the said bridge and works, hereby authorized and directed, the sum of sixty thousand dollars be, and the same is hereby appropriated, payable out of any moneys in the treasury not otherwise appropriated."

(2) The act of Congress, approved June 30, 1834 (4 U. S. Stat., ch. 155, p. 727), entitled "*An Act authorizing the construction of a bridge across the Potomac, and repealing all acts already passed in relation thereto.*"

"*Be it enacted,*" etc., "That the act, entitled 'An Act providing for the purchase by the United States of the rights of the Washington Bridge Company, in the District of Columbia, and for the erection of a public bridge on the site thereof,' which passed the fourteenth day of July, eighteen hundred and thirty-two, and the act entitled 'An act in relation to the Potomac bridge,' which passed the second day of March, eighteen hundred and thirty-three, be, and the same are hereby repealed, except so much of the former as authorized the purchase of the rights of the Washington Bridge Company.

Sec. 2. *And be it further enacted,* That the Secretary of the Treasury be, and he is hereby, authorized and required, to contract for the reconstruction, on the site of the present bridge, across the river Potomac, of a bridge, on the plan of that originally constructed there by the Washington Bridge Company: *Provided,* That
21 the draw at the southern channel of the river be not less than sixty-six feet, and at the northern channel than thirty-five feet; that a space or spaces not exceeding in all, one thousand six hundred and sixty feet of the shoal or shoals, over which the present bridge passes, may be filled up by a solid embankment; in part, if convenient, of earth obtained by dredging the river channel: And provided, also, That the entire cost of said embankment and such reconstruction shall not on the whole exceed one hundred and thirty thousand dollars, which sum is hereby appropriated thereto, out of any money in the treasury not hitherto appropriated."

Sec. 3 is immaterial to the issues herein.

(3) In pursuance of the foregoing act, a bridge, subsequently commonly known as the Long Bridge, was re-constructed on the site

of the old bridge. A solid embankment, or causeway, as described in said act of June 30, 1834, was built up by earth obtained in dredging the river channel between the main channel and the north channel of the river.

(4) The Joint Resolution of July 1, 1836 (5 U. S. Stat. L. p. 134, No. 10), after directing (Sec. 1) the application of the unexpended balance of the appropriation for Potomac Bridge to the improvement of Maryland Avenue leading thereto, under the direction of the Commissioner of Public Buildings, provides "That it shall be the duty of the Commissioner of Public Buildings to attend to the draws, cause the bridge to be properly lighted, to guard against wanton injuries and obstructions, and to preserve a due police on and near it, so as to ensure the safety of passengers and of the public property; the said Commissioner shall receive for his services the yearly compensation of three hundred dollars and be authorized to employ three assistants, at a compensation not exceeding one dollar and fifty cents a day."

n. The act of Congress, approved March 3, 1839 (5 U. S. Stat. L., ch. 229, p. 364), entitled: "*An Act to extend the jurisdiction* of the corporation *of the city of Washington over the Potomac bridge.*"

"*Be it enacted,*" etc., "That the bounds of the county of Washington, and of the corporation of the city of Washington, be, and the same are hereby, extended so far as to comprehend the causeway and bridge lately constructed from the said city across the river Potomac, to the opposite shore: and the said corporation are hereby empowered to adopt and enforce such rules and regulations as they may deem necessary for the safety and security of property and of the persons passing the said causeway and bridge."

(2) From and after the passage of said act, the corporation of the City of Washington exercised jurisdiction over the said causeway and bridge across the river Potomac to the high-water line on the shore of Alexander's Island, and the same was treated as part of, and within the bounds of, the County of Washington and of the corporation of the City of Washington in the District of Columbia, until the said corporation of Washington ceased to exist, that is to say, to May 31, 1871, and thereafter, the said bridge up to said high-water mark until the removal of the same by virtue of the act
22 of February 12, 1901, ch. 353, was continuously treated, for all purposes of government and police, as a part of, and as within the boundaries of, the District of Columbia.

History of the Aqueduct Bridge.

o. The canal of the Alexandria Canal Company, constructed under the act of Congress approved May 26, 1830, ch. 104, (6 Stat., 419), extending from the line of the Chesapeake and Ohio Canal in Georgetown across the Potomac River to a point on the river in and near the City of Alexandria, was carried across the Potomac

t Georgetown upon an aqueduct supported upon piers built on rock
n the bed of the river and upon stone abutments. Said canal, com-
nonly known as the Alexandria Canal, was regularly maintained,
sed and operated between Georgetown, D. C., and Alexandria, Vir-
inia, until the beginning of the Civil War, after which time the por-
on carried over the Potomac up the aqueduct fell into a state of dis-
epair.

p. Act of Congress approved July 27, 1868, entitled:

"Chap. CCLXI.—*An Act relating to the Alexandria Canal.*

Whereas by an act of Congress, on the twenty-sixth day of May,
ghteen hundred and thirty, the Alexandria Canal Company was
ncorporated, and authorized and empowered to construct, operate,
nd maintain a canal from Georgetown, in the District of Columbia,
Alexandria, in the State of Virginia, with an aqueduct across the
otomac river at Georgetown and whereas by an act of the general
ssembly of the State of Virginia, passed on the sixteenth day of
ebruary, eighteen hundr-d and sixty-six, the board of public works
as authorized to unite with the corporate authorities of the city
f Alexandria in making disposition of the Alexandria canal, in
rder to repair and make said canal available and whereas said
oard of public works did, in pursuance of said authority, so unite
ith said corporate authorities, and did by their joint vote, and a
ote of the majority of the stockholders of said canal company, em-
ower and direct the president and directors of the said canal com-
any to lease the said canal for the period of ninety-nine years:
nd whereas the said president and directors, in pursuance of said
uthority, did, on the sixteenth day of May, eighteen hundred and
xty-six, grant, lease, and convey the said canal, its aqueduct, locks,
anks, lands, gates, and property of all description to Henry H.
Vells, Philip Quigley, and William W. Dungan, the grantees
erein named; and whereas afterward, and by an act passed by the
eneral assembly of the State of Virginia, on the seventeenth day
f April, eighteen hundred and sixty-seven, the said lease was rati-
ed and affirmed, and the lessees were further authorized and em-
owered to build, operate, and maintain a new aqueduct, and in
onjunction therewith a railroad and a road bridge across said piers,
nd build, operate, and maintain a railroad from Georgetown to
lexandria; and whereas the said lessees have entered into possession
of and repaired the said canal, and have erected a new aque-
3 duct across the said Potomac river upon the said piers con-
necting the Chesapeake and Ohio canal with the said Alex-
ndria canal: Therefore,

Be it enacted by the Senate and House of Representatives of the
nited States of America in Congress assembled, That the said
queduct across the Potomac river from Georgetown to the Virginia
hore, and so connecting the said canals, is hereby declared to be a
awful structure in its present position and elevation, anything in
ny law or laws of the United States, or of any State, to the con-
rary notwithstanding.

Sec. 2. *And be it further enacted,* That the said lessees, their associates, their heirs, and assigns, are hereby authorized and empowered to maintain and operate said aqueduct, and to erect, build, operate, and maintain across the Potomac river from Georgetown, in the District of Columbia, to the Virginia shore, upon and over the stone piers upon which the aqueduct now rests, in conjunction therewith, a bridge of wood, iron, or stone, with one or more ways for the passage of persons, animals, and vehicles, and also with one or more tracks or ways for the passage of engines and cars, with such other conveniences as are usual or necessary for a railroad.

Sec. 3. *And be it further enacted,* That it shall be lawful for the said lessees, their associates and successors, to lay out, construct, maintain, and operate a railroad across said bridge from Georgetown, in the District of Columbia, to the Virginia shore, and there to connect with said railroad.

Sec. 4. *And be it further enacted,* That as soon as the chief engineer of the army shall certify to the Secretary of War that the said bridge is so far completed as to be ready, fit, and convenient for the passage of persons, animals, and vehicles, the said lessees, their successors, and their legal representatives, may demand, have, and receive, in advance, the following tolls, to wit: For any foot passenger crossing on said bridge, two cents; for any horse, mule, or jack, any ox, or other horned cattle, five cents; for any vehicle drawn by one animal, fifteen cents; drawn by two animals, twenty-five cents; drawn by four animals, thirty-five cents, but no extra charge shall be made for the driver of such vehicle; for any hog, sheep, or other live creature, one cent; which certificate shall be published for three weeks in two daily papers in the city of Washington at the expense of the company: *Provided, however,* That it shall be lawful for said lessees to commute those rates to persons requiring yearly passes; which said rates, or other lower rates to be by them prescribed from time to time, the said lessees may demand in advance, or may sue for, have, and receive, of and from any person who shall pass over said bridge, or who shall send, ride, or drive any animal or vehicle over the said bridge without first paying said tolls. And any person who shall attempt to injure said bridge, or to pass over the same, or to pass his animals over it, without first paying the tolls prescribed herein, or shall attempt to force said bridge, shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five dollars nor more than ten dollars for each offence, to be recovered in any court having jurisdiction of
24 misdemeanors in the District of Columbia: *Provided, however,* That a conviction for such misdemeanor shall not in any wise be a bar to any suit brought to recover damages for an injury to said bridge: *Provided, however,* That said bridge is open and free for the passage of troops and munitions of war by the United States without charge or compensation of any kind.

Sec. 5. *And be it further enacted,* That in case the said bridge shall not be fully completed within five years from the passage of this act, then this act shall be null and void.

Sec. 6. *And be it further enacted,* That said company shall not grant to any railroad or other corporation the exclusive right to transfer passengers or freight over said railroad bridge, but any privilege granted to one corporation shall be extended to all who may make application for such privilege on equal terms; and shall not sell, transfer, or lease their corporate rights to any company that will not check baggage or commute fares with all railroads north or south.

Sec. 7. *And be it further enacted,* That the right is hereby reserved to Congress to amend, alter, or repeal this act.

(15 U. S. Stat. L., pp. 231, 232.)

q. On the 13th of October, 1867, the lessees, Wells, Quigley, and Dungan, in the preceding act mentioned, with the consent of the Alexandria Canal Company, assigned and conveyed all their rights as lessees under said recited lease of May 16, 1866, to the *Alexandria Canal Railroad and Bridge Company,* a corporation chartered under the laws of the State of Virginia.

r. In conformity with Sec. 2 of the said act of July 27, 1868, said Alexandria Canal Railroad and Bridge Company erected upon the piers and abutments supporting the original canal and aqueduct a wooden bridge, supported upon a Howe truss resting on the piers over the top of the canal. This bridge began at the southern terminus of Lingan (now Thirty-sixth) street in Georgetown, crossed the Chesapeake and Ohio Canal to the first or northern abutment of the aqueduct and thence from pier to pier across the river to high-water mark on the Virginia shore, and thence by an elevated structure of some 600 feet in length to the level ground in Virginia.

s. Taxes were levied and assessed in the District of Columbia upon this bridge structure as a whole. A bill was brought in the Supreme Court of the District of Columbia, Eq. 4444, by the Alexandria Canal Railroad and Bridge Company to enjoin the collection of such taxes and the sale, or advertisement for sale, of the property on account thereof, which said suit is the same suit, the opinion in which is reported as The Alexandria Canal Railroad and Bridge Co. vs. The District of Columbia, 1 Mack. (D. C.), 257. In said suit the said company contended and alleged, among other things, that the property upon which the tax was sought to be levied was not within the jurisdiction of the District of Columbia, and, therefore, not assessable by the District authorities. From and after the date of the opinion of the Court in said case that so much of the bridge as extended from Georgetown to high-water mark on the Virginia shore was within the District of Columbia and subject to assessment, the said bridge to said high-water mark has been treated for all purposes of government and police as within the District of Columbia.

t. An act of Congress approved June 21, 1886, entitled:

"Chap. 463.—An act to authorize the purchase of the Aqueduct Bridge or the construction of a bridge across the Potomac River at or near Georgetown, District of Columbia.

Be it enacted, etc., That the Secretary of War is hereby authorized and directed to acquire by purchase a title in fee-simple, free from all liens or claims of lessees or others, the bridge known as the Aqueduct Bridge, including the piers thereof, across the Potomac River, and the approaches thereto, and all the rights and franchises connected with said bridge, for a sum not to exceed one hundred and twenty-five thousand dollars, the title to be approved by the Attorney-General of the United States; and said bridge, when so acquired, shall be used as a free bridge, under such regulations as the Secretary of War may prescribe; and the Secretary of War is further authorized, in case the United States shall acquire title to the said bridge, to repair or reconstruct the same; and for the purpose of acquiring such title and repairing and reconstructing said bridge the sum of two hundred and forty thousand dollars, or so much thereof as may be necessary for such purpose, is hereby appropriated out of any money in the Treasury not otherwise appropriated; and one half of the expense of such purchase and reconstruction or repair of said bridge shall be charged to and paid by the District of Columbia, and the balance, one-half of the sum so expended, shall be paid out of the Treasury of the United States.

(24 U. S. Stat. L., ch. 463, pp. 84–85.)

u. In pursuance of the foregoing provisions of the act of Congress, approved June 21, 1886, the Secretary of War did acquire, by purchase, for and on behalf of the United States the said aqueduct Bridge, including the piers thereof and the approaches thereto, and all the rights and franchises connected therewith, and thereupon the said bridge became a free bridge; and thereafter, in pursuance of the authority to repair or reconstruct the same, the former wooden structure was removed and a new iron bridge erected in place thereof upon the existing stone piers, said new bridge being completed on March 3, 1888.

v. The said bridge so reconstructed was placed under the jurisdiction of the Commissioners of the District of Columbia by the following provision of the act of Congress, approved July 18, 1888 (25 Stat. L., ch. 676, p. 314), making appropriations for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1889:

"Be it enacted," etc.

"Care of Bridges: For ordinary care of bridges, including keepers, oil, lamps, and matches, two thousand five hundred dollars; for construction and repairs of bridges, including retaining wall on M street at the approach to the new free bridge across the Potomac, which bridge is hereby placed under the jurisdiction of the
26 Commissioners of the District of Columbia, fourteen thousand five hundred dollars; in all, seventeen thousand dollars.

(25 U. S. Stat. L., ch. 676, pp. 314, 319.)

w. "An Act To revise and consolidate the statutes of the United States, general and permanent in their nature, relating to the District of Columbia, in force on the first day of December, in the year of our Lord one thousand eight hundred and seventy-three," approved June 22, 1874, ch. 1, Organization and Government: sec. 1. Territorial area.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the District of Columbia is that portion of the territory of the United States ceded by the State of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District, and the islands therein."

(Revised Statutes of the United States, Relating to the District of Columbia. Washington: Government Printing Office, 1875, sec. 1, p. 2.)

x. The following statutes enacted by the Congress of the United States for the protection of the waters of the Potomac.

(1) The act approved April 6, 1880, entitled:

"Chap. 47. An Act for protection of the Potomac fisheries in the District of Columbia and for the preservation of shad and herring in the Potomac River."

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That it shall not be lawful to fish with fyke-net, pound-net, stake-net, weir, float-net, gill-net, haul-seine, or any other contrivance stationary or floating, in the waters of the Potomac River within the District of Columbia, after the thirtieth day of May in any year.

* * * * * * *

Sec. 5. That any person who shall offend against any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon sufficient proof thereof in the Police Court or other court of the District shall be fined not less than ten nor more than one hundred dollars for each offense and shall forfeit to the District his nets, boats and other apparatus, which shall be sold and the proceeds of such sales and all fines accruing under this act shall be paid into the Treasury, and therefrom, to the informer, in each case where conviction ensues, shall be paid the sum of ten dollars: *Provided*, That nothing in this act shall be construed to prohibit angling or fishing with the out line, or to prevent the Commissioner of Fish and Fisheries, or his agents, from taking from the waters named in any manner desired, fish of any kind for scientific purposes or for the purposes of propagation."

(21 U. S., Stat. L., p. 71.)

(2) The act of March 2, 1885, entitled:

27 "Chap. 316. An act to protect the fish in the Potomac River in the District of Columbia, and to provide a spawning-ground for shad and herring in the said Potomac River."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after date of passage of this act, for a term of five years, it shall not be lawful to fish with fyke-net, pound net, stake-net, weir, float-net, gill-net, haul-seine, or any other contrivance, stationary or floating, in the waters of the Potomac River within the District of Columbia.

Sec. 2. That any person who shall offend against any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon sufficient proof thereof in the police court or other court of the District of Columbia, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each and every such offense and shall forfeit to the District his nets, boats, and all other apparatus and appliances used in violation of law, which shall be sold; and the proceeds of such sales, and all fines accruing under this act, shall be paid into the Treasury: *Provided,* That nothing in this act shall be construed to prohibit angling or fishing with the outline or to prevent the United States Commissioner of Fish and Fisheries or his agents, from taking from said waters of the Potomac River in the District of Columbia, in any manner desired, fish of any kind for scientific purposes or for the purposes of propagation.

Sec. 3. That from and after three months from the date of the passage of this act it shall be unlawful to allow any tar, oil, ammoniacal liquor or other waste products of any gas-works or of works engaged in using such products or any waste product whatever of any mechanical, chemical, manufacturing or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same; and any one guilty of violating this section shall on conviction as provided in Section two of this act, be fined not less than ten dollars nor more than one hundred dollars for each and every day during which said violation shall continue to be prosecuted for and recovered as provided in the preceding section."

(23 U. S., Stat. L., 340, c. 316, sec. 1, 2, and 3.)

(3) Section 896 of the "Act to establish a Code of Law for the District of Columbia," approved March 3, 1901 (31 Stat. L., p. 133, ch. 854), to go into effect on, from and after the first day of January 1902.

"Sec. 896. NET FISHING IN POTOMAC RIVER, AND SO FORTH.—It shall not be lawful for any person to fish with fyke net, pound net, stake net, weir, float net, gill net, haul seine, dip net, or any other contrivance, stationary or floating, in the waters of the Potomac River and its tributaries within the District of Columbia: Provided, That this section shall not be construed to prevent the use of bar nets or pots for the catching or killing of eels or prevent the United States Commissioner of Fish and Fisheries or his agents from taking from said waters, in any manner desired, fish of any kind for scientific purposes or for purposes of propagation, and that nothing
28 herein contained shall apply to persons employed in catching young catfish, smelt, chub, bull minnows, and crayfish

use as bait in fishing with hook and line; *Provided further*, That any person engaged in taking such catfish, smelt, chub, bull minnows, and crayfish shall first have procured a written permit from the said Commissioner of Fish and Fisheries to take such bait for hook-and-line fishing." (Pp. 236-237.)

(4) Section 901 of the Code aforesaid:

"Sec. 901. DEPOSITS OF DELETERIOUS MATTER.—No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same" (Pp. 237-238.)

IV.

Claim of Defendant.

On behalf of the defendant, The Marine Railway & Coal Company, Inc., the following is offered in evidence:

Charter to Sir Walter Raleigh, 1584.

a. The charter by Queen Elizabeth in 1584, to Sir Walter Raleigh, granted to him, "his heires assignes for euer, free libertie and license from time to time, and at all times for euer hereafter, to discouer, search, finde out, and view such remote, heathen and barbarous lands, countries, and territories, not actually possessed of any Christian Prince, nor inhabited by Christian People, as to him, his heires and assignes, and to euery or any of them shall seeme good, and the same to haue, holde, occupie and enjoy to him, his heires and assignes for euer, with all prerogatiues, commodities, jurisdiction, royalties, priuileges, franchises and preheminences, thereto or thereabouts both by sea and land, whatsoeuer we by our letters patents may graunt, and as we or any of our noble progenitors haue heretofore graunted to any person or persons, bodies politique or corporate."

Thorpe's American Charters, Constitutions and Organic Laws, 1492-1908, Vol. I, p. 53.)

First Charter of Virginia, 1606.

b. The charter of 1606 by James 1st granted to Sir Thomas Gates, Sir George Sommers, and others, the right "to make habitation, plantation, and to deduce a colony of sundry of our people into that part of America, commonly called Virginia, and other parts and territories in America, either appertaining unto us, or which are not now actually possessed by any christian prince or people, situate,
29 lying and being all along the sea coasts, between four and thirty degrees of Northerly latitude from the Equinoctial

line, and five and forty degrees of the same latitude, and in the ma
land between the same four and thirty and five and forty degre
and the islands thereunto adjacent, or within one hundred miles
the coasts thereof," and "all the lands, woods, soil, grounds, have
ports, rivers, * * * waters," etc.

(1 Hening (Va.) Stat. L., pp. 57, 59.)

Second Charter of Virginia, 1609.

c. The charter of Virginia, granted in 1609 by James 1st to t
corporation known as "The Treasurer and Company of Adventur
and Planters of the City of London for the first Colony in Virgini
of "all those lands, countries, and territories, situate, lying, a
being, in that part of America called Virginia, from the point
land, called Cape or Point Comfort, all along the sea coast, to t
northward two hundred miles, and from the said Point *of* Ca
Comfort, all along the sea coast to the southward two hundred mil
and all that space and circuit of land, lying from the sea co
* * * up into the land, throughout from sea to sea, west a
northwest; and also all the islands, lying within one hundred mil
along the coast of both seas * * * together with all * *
rivers, waters," etc.

(1 Hening (Va.) Stat. at L., p. 88.)

Third Charter of Virginia, 1611 & VFVR.

d. The charter of 1611 and 1612, by King James to the Tre
urer & Company of Adventurers and Planters of the City of Lond
for the first colony in Virginia, granted "all and singular th
Islands * * * situate and being in any part of the ocean s
bordering upon the coast of our said first colony in Virginia" (
described in the last preceding charter) "and being within th
hundred leagues of any the parts heretofore granted to the s
treasurer and company," (and in the last patent mentioned) "a
being within or between the one and fortieth and thirtieth degr
of northerly latitude, together with all * * * rivers, water
etc.

(1 Hening (Va.) Stat. at L., p. 100.)

Grant by Governor of Virginia to John Matthews, July, 1669.

e. July 2, 1669, Sir William Berkeley, Knight, Governor of V
ginia, granted to John Matthews, 1567 acres of land lying and bei
in the freshes of the Potomac river upon the southwest side of t
creek called Mussel Creek, and on the northwest side of the P
tomac River, beginning at a marked gum standing near the he
of said creek, and running down the said creek southeast by e
788 poles to a point of sunken land abutting upon the Poto
River; from thence down the said River southwest by sou
30 to a forked black walnut standing near a small creek op
site to a piece of sunken land which divides this land and t

tract surveyed for Mr. Thomas Bunberry; from thence northwest by west 788 poles to a marked oak, finally northeast by north to the gum, the beginning.

Grant by Governor of Virginia to Robert Howsing, Oct. 21, 1669.

f. October 21, 1669, Sir William Berkeley, Knight, Governor of Virginia, granted to Robert Howsing, 6000 acres of land situated upon the freshes of the Potomac river on the west side thereof above the dividing branches of the same, beginning at a red oak standing by a small branch or run of water near opposite to a small island commonly called and known by the name of My Lords Island, extending down the Potomac river various courses 3152 poles, making a southwesterly line to a pokecory standing at the north point of a creek named by the English Indian Cabin Creek, which creek divides this land and the tract of land surveyed by John Matthews, from the said pokecory northwest and by west by the said Creek and main branch 520 poles; from thence north 940 poles, finally east 720 poles to the red oak begun at, including several small creeks and inlets for the said quantity of land.

Grant by James 2d to Lord Culpeper, Sept., 1688.

g. In September, 1688 King James 2nd by his royal patent of that date granted to Thomas, Lord Culpeper, what was called the Northern Neck of Virginia, described as follows:

"All that entire tract, territory or parcel of land situate, lying and being in Virginia in America, and bounded by and within the first heads or springs of the rivers of Tappahannock al^s^ Rapahannock and Quiriough al^s^ Patawonuck Rivers, the courses of said rivers from their said first heads or springs as they are commonly called and known by the inhabitants * * * of those parts and the Bay of Chesapeake, together with the said rivers themselves and all the islands within the outermost banks thereof, and the soil of all and singular the premises, and all lands, woods, underwoods, timber and trees, ways, mountains, swamps, marshes, waters, rivers, ponds, pools, lakes, water courses, fishings, streams, havens, ports, harbours, bays, creeks, ferries," etc. "To have" and to hold the same unto the said "Thomas, Lord Culpeper, his heirs and assigns forever."

(*Morris v. United States,* 174 U. S., 223, 224.)

Virginia Act, 1748, *Confirming Crown Grants in Northern Neck.*

h. 6 Hening's Statutes at Large, Chapter 55, page 198. "*An Act for confirming the grants made by his majesty, within the bounds of the Northern Neck, as they are now established.*" Passed October 27th, 1748.

31 I. WHEREAS in the late dispute and controversy, touchin
the limits and boundaries of the several letters patent grante
by their late majesties king Charles the second, and king James th
second, unto the ancestors of the right honourable Thomas lord Fai
fax, it hath been aljudged and determined by his present majesty, i
council, that the said letters patent do include all that tract or te
ritory of land between the rivers of Patowmack and Rappahanoc
and the line now marked from the head spring of the said rive
Patowmack, to the head spring of Rappahanock, commonly calle
the Conway; in which said tract or territory of land, as is befo
cescribed, many adventurers and planters have taken up gre
quantities of land, and obtained grants and patents thereof fro
the crown, under the seal of this colony: And whereas the sa
Thomas lord Fairfax hath consented, before the king, in counci
that the several grants and patents made by the crown of the lan
included in the boundary aforesaid, should be confirmed to th
several grantees, their heirs and assigns; to be held nevertheless
the said lord Fairfax, under the like rents, services, profits, an
emoluments, as should be paid, done, and arise, by and from th
said grants made by the crown.

II. *Be it therefore enacted, by the Lieutenant Governor, Coun
and Burgesses, of this present General Assembly, and it is hereb
enacted by the authority of the same*, That all grants and paten
whatsoever, under the seal of this colony, for lands situate and lyi
within the limits and boundaries of the letters patent granted
the ancestors of the said lord Fairfax, as the same are now settl
and determined, heretofore made and granted by the crown, shall
held, deemed, and taken to be valid and effectual; and the a
venturers and planters to whom the same were granted, their hei
and assigns, shall, for ever hereafter, peaceably and quietly, hav
hold, and enjoy the said granted premises, respectively, accordi
to such granted estates, under the rents and services in the sa
grants reserved; to be paid and performed, to the said Thomas lo
Fairfax, his heirs and assigns, for ever: Any mis-recital or defect
the said grants notwithstanding."

(6 Hening (Va.) Stat. at L., Ch. 55, p. 198.)

Virginia Constitution, 1776, *of Cession to Maryland.*

i. The Constitution of Virginia of 1776, in the twenty-first pa
graph thereof, is contained the following cession to the State
Maryland and other states bordering on Virginia:

"The territories contained within the charters erecting the co
nies of *Maryland*, *Pennsylvania*, *North* and *South Carolina*,
hereby ceded, released, and forever confirmed to the people of th
colonies respectively, with all the rights of property, jurisdictio
and government, and all other rights whatsoever which might
any time heretofore have been claimed by Virginia, except t
free navigation and use of the rivers *Potowmac* and *Pohomoke*, wi
the property of the Virginia shores or strands bordering on either

the said rivers, and all improvements which have been or shall
32 be made thereon. The western and northern extent of *Virginia* shall, in all other respects, stand as fixed by the charter of King *James* the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of *Great-Britain* and *France*, in the year one thousand seven hundred and sixty-three; unless, by act of Legislature, one or more territories shall hereafter be laid off, and governments established westward of the *Alleghany* mountains. And no purchase of lands shall be made of the *Indian* natives but on behalf of the public, by authority of the General Assembly."

(1 Hening (Va.) Statutes at Large, par. XXI, p. 56.)

Compact of Virginia & Maryland, 1785.

j. By the compact dated March 28, 1785, between the State of Maryland and the State of Virginia, which was confirmed by the General Assembly of Maryland first and afterwards by the General Assembly of Virginia, the boundary line between the two States was sought to be established. The seventh paragraph of this compact provides, "The citizens of each state respectively shall have full property in the shores of Patowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharfs and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both states; provided, that such common right be not exercised by the citizens of the one state to the hinderance or disturbance of the fisheries on the shores of the other state, and that the citizens of neither state shall have a right to fish with nets or seans on the shores of the other."

(2 Kilty's Laws of Maryland, c. I., sec. 7.)

Maryland Act, 1785, *to Ratify Compact.*

k. "An Act to approve, confirm and ratify, the compact made by the commissioners appointed by the general assembly of the commonwealth of Virginia, and the commissioners appointed by this state, to regulate and settle the jurisdiction and navigation of Patowmack and Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia."

"WHEREAS, at a meeting of the commissioners appointed by the general assemblies of the commonwealth of Virginia and the state of Maryland, for forming a compact between the two states, to regulate and settle the jurisdiction and navigation of Patowmack, Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia, to wit: George Mason and Alexander Henderson, Esquires, on the part of the commonwealth of Virginia, and Daniel of Saint Thomas Jenifer, Thomas Stone and Samuel Chase,

Esquires, on the part of the state of Maryland, at Mount Vernon
in Virginia, on the twenty-eighth day of March, in the year of
thousand seven hundred and eighty-five, the following com
33 pact was mutually agreed to by the said commissioners. Firs
The commonwealth of Virginia disclaims all right to impos
any toll, duty or charge, prohibition or restraint, on any vessel wha
ever sailing through the capes of Chesapeake bay to the state of Mar
land, or from the said state through the said capes outward boun
and agrees that the waters of Chesapeake bay, and the river Poc
moke, within the limits of Virginia, be for ever considered as a com
mon highway, free for the use and navigation of any vessel belon
ing to the said state of Maryland, or any of its citizens, or carr
ing on commerce to or from the said state, or with any of i
citizens, and that any such vessel, inward or outward bound, ma
freely enter any of the rivers within the commonwealth of Virgin
as a harbour, or for safety against an enemy, without the payment
port duties, or any other charge; and also that the before-mention
parts of Chesapeake bay and Pocomoke river be free for the navig
tion of vessels from one port of the state of Maryland to anothe
Second, The state of Maryland agrees, that any vessel belonging
the commonwealth of Virginia, or any of its citizens, or carryi
on commerce to or from the said commonwealth, or with any of i
citizens, may freely enter any of the rivers of the said state
Maryland as a harbour, or for safety against an enemy, witho
the payment of any port duty, or any other charge. Third, vess
of war, the property of either state shall not be subject to the pa
ment of any port duty, or other charge. Fourth, Vessels not exce
ing forty feet keel, nor fifty tons burthen, the property of any ci
zen of Virginia or Maryland, or of citizens of both states, tradi
from one state to the other only, and having on board only t
produce of the said states, may enter and trade in any part of eith
state, with a permit from the naval-officer of the district from whi
such vessel departs with her cargo, and shall be subject to no po
charges. Fifth, All merchant vessels (except such as are describ
in the fourth article) navigating the river Patowmack, shall ent
and clear at some naval-office on the said river in one or both stat
according to the laws of the state in which the entry shall be mad
and where any vessel shall make an entry in both states, such ves
shall be subject to tonnage in each state, only in proportion to t
commodities carried to or taken from such state. Sixth, The riv
Patowmack shall be considered as a common highway for the pu
pose of navigation and commerce to the citizens of Virginia a
Maryland, and of the United States, and to all other persons
amity with the said states trading to or from Virginia or Marylan
Seventh, The citizens of each state respectively shall have full pro
erty in the shores of Patowmack river adjoining their lands, wi
all emoluments and advantages thereunto belonging, and the pri
lege of making and carrying out wharfs and other improvemen
so as not to obstruct or injure the navigation of the river, but t
right of fishing in the river shall be common to, and equally enjoy
by, the citizens of both states; provided, that such common rig

be not exercised by the citizens of the one state to the hinderance or disturbance of the fisheries on the shores of the other state, and that the citizens of neither state shall have a right to fish with nets
34 or seans on the shores of the other. Eighth, All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine, in the river Patowmack, or for preserving and keeping open the channel and navigation thereof, or of the river Pocomoke within the limits of Virginia, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both states. Ninth, Light-houses, beacons, buoys, or other necessary signals, shall be erected, fixed and maintained, upon Chesapeake bay, between the sea and the mouths of the rivers Patowmack and Pocomoke, and upon the river Patowmack, at the expense of both states; if upon Patowmack river, at the joint and equal charge of both states, and if upon the before-mentioned part of Chesapeake bay Virginia shall defray five parts, and Maryland three parts, of such expence, and if this proportion shall in future times be found unequal, the same shall be corrected. And for ascertaining the proper places, mode and plans, for erecting and fixing light-houses, buoys, beacons, and other signals, as aforesaid, both states shall, upon the application of either to the other, appoint an equal number of commissioners, not less than three or more than five from each state, to meet at such times and places as the said commissioners or a major part of them, shall judge fit, to fix upon the proper places, mode and plans, for erecting and fixing such light-houses, beacons, or other signals, and report the same, with an estimate of the expence, to the legislatures of both states, for their approbation. Tenth, All piracies, crimes or offences, committed on that part of Chesapeake bay which lies within the limits of Virginia, or that part of the said bay where the line of division from the south point of Patowmack river (now called Smith's Point) to Watkins' Point, near the mouth of Pocomoke river, may be doubtful, and on that part of Pocomoke river within the limits of Virginia, or where the line of division between the two states upon the said river is doubtful, by any persons not citizens of the commonwealth of Virginia, against the citizens of Maryland, shall be tried in the court of the state of Maryland which hath legal cognizance of such offences. And all piracies, crimes, and offences, committed on the beforementioned parts of Chesapeake bay and Pocomoke river, by any persons not citizens of Maryland, against any citizen of Virginia, shall be tried in the court of the commonwealth of Virginia which hath legal cognizance of such offences. All piracies, crimes and offences, committed on the said parts of Chesapeake bay, and Pocomoke river, by persons not citizens of either state, against persons not citizens of either state, shall be tried in the court of the commonwealth of Virginia having legal cognizance of such offences. And all piracies, crimes and offences, committed on the said parts of Chesapeake bay and Pocomoke river, by any citizen of the commonwealth of Virginia, or of the state of Maryland, either against the other, shall be tried in the court of that state of which

the offender is a citizen. The jurisdiction of each state over the river Patowmack shall be exercised in the same manner as is prescribed for the before-mentioned parts of Chesapeake bay and Pocomoke river in every respect, except in the case of piracies, crimes and offences, committed by persons not citizens of either state, upon persons not citizens of either state, in which case the offenders shall be tried by the court of the state to which they shall first be brought; and if the inhabitants of either state shall commit any violence, injury or trespass, to or upon the property or lands of the other, adjacent to the said bay or rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any court of record, or civil magistrate, of the state where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment in the same manner as if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the state where the offender shall have been committed, and also in the state where the said offender may reside, and execution may be issued by the court, or magistrate, giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment properly authenticated being produced to any court or magistrate of the state where such offender may reside, having jurisdiction within the state or county where the offender may reside in cases of a similar nature, such court or magistrate shall order execution to issue upon such authenticated judgment, in the same manner and to the same extent, as if the judgment had been given by the court or magistrate to which such transcript shall be exhibited. Eleventh, Any vessel entering in any port on the river Patowmack, may be libelled or attached for debt by process from the state in which such vessel entered; and if the commercial regulations of either state shall be violated by any person carrying on commerce in Patowmack or Pocomoke rivers, the vessel owned or commanded by the person so offending, and the property on board may be seized by process from the state whose laws are offended, in order for trial; and if any person shall fly from justice in a civil or criminal case, or shall attempt to defraud creditors, by removing his property, such person, or any property so removed, may be taken on any part of Chesapeake bay, or the rivers aforesaid, by process of the state from which such person shall fly, or property be removed; and process from the state of Virginia may be served on any part of the said rivers upon any person, or property of any person, not a citizen of Maryland, indebted to any citizen of Virginia, or charged with injury having been by him committed; and process from the state of Maryland may be served on any part of the said rivers upon any person, or property of any person, not a citizen of Virginia, indebted to a citizen of Maryland, or charged with injury having been by him committed. And in all cases of trial in pursuance of the jurisdiction settled by this compact, citizens of either state shall attend as witnesses in the other, upon a summons from any court or magistrate having jurisdiction, being served by

proper officer of the county where such citizen shall reside. Twelfth, The citizens of either state having lands in the other, shall have full liberty to transport to their own state the produce of such lands, or to remove their effects, free from any duty, tax or charge whatsoever, for the liberty to remove such produce or effects. Thirteenth, These articles shall be laid before the legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each state, never to be repealed or altered by either without the consent of the other: And whereas this general assembly are of opinion, that the said compact is made on just and mutual principles, for the true interest of both governments, and if executed with good faith, will perpetuate harmony, friendship and good offices, between the two states, so essential to the prosperity and happiness of their people;

II. BE IT ENACTED, *by the General Assembly of Maryland*, That the said compact is hereby approved, confirmed and ratified, and that as soon as the said compact shall be approved, confirmed, and ratified, by the general assembly of the commonwealth of Virginia, hereupon, and immediately thereafter, every article, clause, matter and thing, in the same compact contained, shall be obligatory on this state and the citizens thereof, and shall be for ever faithfully and inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said compact; and the faith and honour of this state is hereby solemnly pledged and engaged to the general assembly of the commonwealth of Virginia, and the government and citizens thereof, that this law shall never be repealed or altered by the legislature of this government, without the consent of the government of Virginia."

Passed November 7, 1785.

(2 Kilty's Laws of Maryland, Ch. I.)

Virginia Act 1786, *Ratifying Compact.*

1. *"An Act to approve, confirm, and ratify the compact made by certain commissioners appointed by the general assembly of the state of Maryland and commissioners appointed by this commonwealth."* passed the 3rd of January, 1786.

"I. WHEREAS, at a meeting of the commissioners appointed by the general assembly of the state of Maryland and Virginia, to wit: Daniel of St. Thomas Jenifer, Thomas Stone, and Samuel Chase, esquires, on the part of the State of Maryland, and George Mason and Alexander Henderson, esquires, on the part of the state of Virginia, at Mount-Vernon, in Virginia, on the 28th day of March, in the year one thousand seven hundred and eighty-five, the following compact was mutually agreed to by the said commissioners."

(Here follows a recital in identical words of the compact as contained in the preceding Maryland Act, whereupon the act proceeds as follows:)

"BE IT THEREFORE ENACTED, That the said compact is hereby approved, confirmed, and ratified by the general assembly of Virginia, and that every article, clause, matter and thing therein contained, shall be obligatory on this state and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by this
37 government and all its citizens, according to the true intent and meaning of the said compact; and the faith and honour of this state is hereby solemnly pledged and engaged to the general assembly of the state of Maryland, and the government and citizens thereof, that this law shall never be repealed, or altered, by the legislature of this commonwealth, without the consent of the state of Maryland."

(12 Hening's Statutes at Large, 1785-1788, Ch. XVII, pp. 50-55.)

Act of Virginia 1789, *Ceding Territory for D. C.*

m. "*An Act for the cession of ten miles square, or any lesser quantity of territory within this state, to the United States, in Congress assembled, for the permanent seat of the general government.* (Passed the 3d of December, 1789.)"

"Sect. 1. WHEREAS the equal and common benefits resulting from the administration of the general government will be best diffused, and its operations become more prompt and certain, by establishing such a situation for the seat of the said government, as will be most central and convenient to the citizens of the United States at large, having regard as well to population, extent of territory, and a free navigation to the Atlantic Ocean, through the Chesapeake bay, as to the most direct and ready communication with our fellow-citizens in the western frontier; *And whereas* it appears to this Assembly that a situation combining all the considerations and advantages before recited, may be had on the banks of the river Patowmack, above tide water, in a country rich and fertile in soil, healthy and salubrious in climate, and abounding in all the necessaries and conveniences of life, where in a location of ten miles square, if the wisdom of Congress shall so direct, the states of Pennsylvania, Maryland and Virginia may participate in such location;

Be it therefore enacted by the General Assembly, That a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of this state, and in any part thereof as Congress may by law direct, shall be, and the same is hereby for ever ceded and relinquished to the Congress and government of the United States, in full and absolute right, and exclusive jurisdiction as well of soil, as of persons, residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States.

Sec. 2. *Provided* that nothing herein contained, shall be construed to vest in the United States, any right of property in the soil,

r to affect the rights of individuals therein, otherwise than the same hall or may be transferred by such individuals to the United States.

Sec. 3. *And provided also,* That the jurisdiction of the laws of this ommonwealth, over the persons and property of individuals resid- ng within the limits of the cession aforesaid, shall not cease or de- rmine, until Congress, having accepted the said cession, shall by w provide for the government thereof, under their jurisdiction, in anner provided by the article of the constitution before recited."

(13 Hening (Va.) Stat., Ch. XXXII, pp. 43-44.)

Act of Congress 1846, *Receding Va. Territory.*

n. Chap XXXV, *"An Act to retrocede the County of Alexandria, the District of Columbia, to the State of Virginia.*

Whereas, no more territory ought to be held under the exclusive gislation given to Congress over the District which is the seat of e General Government than may be necessary and proper for e purposes of such a seat; and whereas, experience hath shown that e portion of the District of Columbia ceded to the United States by e State of Virginia has not been, nor is ever likely to be, neces- ry for that purpose; and whereas, the state of Virginia, by an act ssed on the third day of February, eighteen hundred and forty- , entitled 'An act accepting by the State of Virginia the County of lexandria, in the District of Columbia, when the same shall be ceded by the Congress of the United States,' hath signified her llingness to take back the said territory ceded as aforesaid: There- re—

Be it enacted by the Senate and House of Representatives of the nited States of America in Congress assembled, That, with the as- nt of the people of the county and town of Alexandria, to be as- rtained as hereinafter prescribed, all of that portion of the District Columbia ceded to the United States by the State of Virginia, and the rights and jurisdiction therewith ceded over the same, be, d the same are hereby, ceded and forever relinquished to the State Virginia, in full and absolute right and jurisdiction, as well of l as of persons residing or to reside thereon.

Sec. 2. *And be it further enacted,* That nothing herein contained all be construed to vest in the State of Virginia any right of prop- y in the custom-house and post-office of the United States within e town of Alexandria, or in the soil of the territory hereby receded, as to affect the rights of individuals or corporations therein, other- se than as the same shall or may be transferred by such individuals corporations to the State of Virginia.

Sec. 3. *And be it further enacted,* That the jurisdiction and laws w existing in the said territory, ceded to the United States by the ate of Virginia, as aforesaid, over the persons and property of in- iduals therein residing, shall not cease or determine until the State

of Virginia shall hereafter provide, by law, for the extension of her jurisdiction and judicial system over the said territory hereby receded.

Sec. 4. *And be it further enacted*, That this act shall not be in force until after the assent of the people of the county and town of Alexandria shall be given to it in the mode hereinafter provided. Immediately after the close of the present session of Congress, the President of the United States shall appoint five commissioners, (any three of whom may act,) citizens of the said town or county of Alexandria, and freeholders within the same, who shall be sworn, before some justice of the peace in and for the said town or county, to discharge the duties hereby imposed upon them faithfully, impartially, and to the best of their ability. These commissioners, or any of them, shall proceed, within ten days after they are notified of their
39 appointment, to fix upon the time, place, and manner, of taking the vote within the town or county of Alexandria, and shall give notice of the same by advertisement in the newspapers of the said town. And on the day and at the place so appointed, every free white male citizen of the United States, who shall have resided in said county of Alexandria for six months preceding the time when he offers his vote, insane persons and paupers excepted, shall vote *viva voce* upon the question of accepting or rejecting the provisions of this act. The said commissioners shall preside when this vote is taken, and decide all questions arising in relation to the right of voting under this act. Within three days after this vote is taken as aforesaid, the said commissioners shall make out three statements of the result of this poll, upon oath, and under their seals. Of these, one shall be transmitted to the President of the United States, one to the Governor of the Commonwealth of Virginia, and one shall be deposited in the clerk's office of the county court of Alexandria. If a majority of the votes so given shall be cast against accepting the provisions of this act, then it shall be void and of no effect; but if a majority of the said votes should be in favor of accepting the provisions of this act, then this act shall be in full force, and it shall be the duty of the President of the United States to inform the Governor of Virginia that this act is in full force and effect, and to make proclamation of the fact.
ing for the banner, did you not?

Sec. 5. *And be it further enacted*, That, in such case, the right of property in the half square in Alexandria on which stands the courthouse, bounded by Columbus, Queen, and Princess Streets, and the half square on which stands the jail, bounded by Princess, St. Asaph, and Pitt Streets, shall be conveyed to the Governor of Virginia, and his successors, for the use of the county and corporation of Alexandria forever; and the Solicitor of the Treasury of the United States is hereby authorized and required, in the name and on the behalf of the United States, to make all the proper and necessary conveyances for that purpose.

Sec. 6. *And be it further enacted,* That Congress will in no event ume and pay the debt, or any part thereof, now due by the cor-ration of the city of Alexandria.

Approved July 9, 1846."

(9 U. S. Stat. L., 1846-1851, 29th Cong., 1st Sess., Ch. 35, pp. 35-37.)

Act of Virginia 1846, *Accepting Recession of Territory.*

. "An Act accepting by the State of Virginia the county of Alex-dria, in the District of Columbia, when the same shall be re-ceded the congress of the United States.

(Passed February 3, 1846.)

Whereas the general assembly of this commonwealth, on the third of December, in the year seventeen hundred and eighty-nine, sed an act, entitled 'an act for the cession of ten miles square, or lesser quantity of territory within this state, to the United States, congress assembled, for the permanent seat of the general govern-ment;' and by the said act it was enacted, that 'a tract of country not exceeding ten miles square, or any lesser quan-tity, to be located within the limits of this state, and in any t thereof as congress may by law direct, shall be and the same is eby forever ceded and relinquished to the congress and the gov-ment of the United States, in full and absolute right, and exclu-jurisdiction as well of soil as of persons residing or to reside there-pursuant to the tenor and effect of the eighth section of the first cle of the constitution of the government of the United States.' l whereas the congress of the United States did, under the pro-ons of the said act, locate that portion of the territory of Virginia known as the county of Alexandria in the District of Columbia, g south and west of the river Potomac, and bounded by said r and the lines which separate the District of Columbia from ginia: And whereas the congress of the United States, on the nty-seventh day of February, in the year eighteen hundred and passed an act, entitled 'an act concerning the District of Colum-' by the provisions of which act the exclusive jurisdiction of the ted States was extended over the territory so located as aforesaid, ch territory has since formed a part of the District of Columbia: l whereas a petition has been presented to the general assembly the citizens residing in said county of Alexandria, representing they now have pending before the congress of the United States pplication for the re-cession of the said county of Alexandria to commonwealth of Virginia, and praying the consent of the ral assembly to such re-cession, and for the passage of a law to effect thereto, if the same should be granted by congress; and as prayer of the said petition is deemed reasonable,

. *Be it therefore enacted by the general assembly,* That so soon as congress of the United States shall by law re-cede to the com-wealth of Virginia the said county of Alexandria, and relinquish

their exclusive jurisdiction, as well of territory as of persons residin or to reside thereon, the same shall be re-annexed to the said com monwealth, and constitute a portion thereof, subject to such reserv tion and provisions respecting the public property of the Unite States, as congress may enact in their act of re-cession.

2. *Be it further enacted*, That the general assembly hereby assen that the jurisdiction and laws of the United States, as well as th rights and privileges of the citizens of said county, and bodies politi and corporate thereof, shall continue in force and be exercised in lik manner, and to the same extent, as they now exist, until the gener assembly of Virginia shall by law provide for the government o said county under the constitution and laws of this commonwealth

3. This act shall be in force from the passing thereof."
(Laws of Virginia, 1842-*1846*, Ch. 64, pp. 50-51.)

Result of Election, 1846, on Re-cession.

p. That official returns of the Commissioners appointed under a Act of Congress to hold the election upon the re-cession of Alexan dria City and County to the State of Virginia, which was returne and deposited in the Clerk's office of the County Court of Alexandri cannot be found after diligent search therefor; but that th
41 files of the Alexandria Gazette of the 3rd of September, 184 show that the election on the question of retrocession as pr vided by the Act of Congress, was held on the 1st and 2nd days o September, 1846, and that 763 votes were cast for retrocession, an 222 votes against retrocession, making a total of 985 votes cast, an showing a majority of 541 in favor of retrocession. The Alexandri Gazette is a newspaper still published in the city of Alexandria, an has been so published for over a hundred years, and its files of th date aforesaid show the full result of the election on the question o retrocession.

p-1. "By the President of the United States of America,

A Proclamation.

Whereas by the act of Congress, approved July 9, 1846, entitle 'An Act to retrocede the County of Alexandria, in the District o Columbia, to the State of Virginia, "it is enacted, That, with the a sent of the people of the county and town of Alexandria, to be asce tained in the manner therein prescribed, all that portion of the Di trict of Columbia ceded to the United States by the State of Virgini and all the rights and jurisdiction therewith ceded over the sam shall be ceded and forever relinquished to the State of Virginia, i full and absolute right and jurisdiction, as well of soil as of person residing or to reside thereon: And, whereas, it is further provided that the said act 'shall not be in force until after the assent of th people of the county and town of Alexandria shall be given to it, i the mode therein provided;' and if a majority of the votes should b

in favor of accepting the provisions of the said act, it shall be the duty of the President to make proclamation of the fact:

And whereas, on the 17th day of August, 1846, after the close of the late session of the Congress of the United States, I duly appointed five citizens of the county or town of Alexandria, being freeholders within the same, as commissioners, who, being duly sworn to perform the duties imposed on them, as prescribed in the said act, did proceed, within ten days after they were notified, to fix upon the first and second days of September, 1846, as the time, the court-house of the county of Alexandria, as the place, and *viva voce* as the manner of voting; and gave due notice of the same; and at the time, and at the place, in conformity with the said notice, the said commissioners presiding, and deciding all questions arising in relation to the right of voting under the said act, the votes of the citizens qualified to vote were taken *viva voce*, and recorded in poll-books, duly kept, and on the third day *or* (of) September instant, after the said polls were closed, the said commissioners did make out, and on the next day did transmit to me, a statement of the polls so held, upon oath, and under their seals; and of the votes so cast and polled, there were, in favor of accepting the provisions of the said act, seven hundred and sixty-three votes, and against accepting the same, two hundred and twenty-two—showing a majority of five hundred and forty-one votes for the acceptance of the same.

42 Now, therefore, be it known, that I, James K. Polk, President of the United States of America, in fulfilment of the duty imposed upon me by the said act of Congress, do hereby make proclamation of the 'result' of said 'poll,' as above stated, and do call upon all and singular the persons whom it doth or may concern, to take notice, that the act aforesaid, 'is in full force and effect.'

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this seventh day of September, in the year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States, the seventy-first.

JAMES K. POLK.

By the President:

N. P. TRIST,
Acting Secretary of State."

(9 U. S. Stat., p. 1,000.)

Acts of Virginia 1847, *Extending Jurisdiction Over Receded Territory.*

q. "An Act to extend the jurisdiction of the commonwealth of Virginia over the county of Alexandria.

(Passed March 13, 1847.)

1. *Be it enacted by the general assembly of the commonwealth of Virginia,* That the territory comprising the county of Alexandria,

in the District of Columbia, heretofore ceded by this commonwealth to the United States, and by an act of congress approved on the ninth day of July, eighteen hundred and forty-six, retroceded to this commonwealth, and by it accepted, is hereby declared to be an integral portion of this commonwealth, and the citizens thereof are hereby declared to be subject to all the provisions, and entitled to all the benefits, rights and privileges of the bill of rights and constitution of this commonwealth.

2. That from and after the twentieth day of March, eighteen hundred and forty-seven, the public and general laws of this commonwealth then in force, and the common law, as it is recognized in this commonwealth, shall be the law of said territory, subject to the exceptions and provisions hereinafter contained.

3. That the territory so retroceded and accepted, comprising the county of Alexandria, shall constitute a new county, retaining the name of the county of Alexandria, the courthouse whereof shall be in the town of Alexandria where the courts now sit; and the said county of Alexandria and the county of Fairfax, shall together elect one delegate to the house of delegates of this commonwealth until a reapportionment shall take place, or until otherwise provided by the general assembly.

4. The said county of Alexandria shall belong to the same congressional district, the same senatorial district, and to the same electoral district (for the purpose of choosing a president and vice-president of the United States) as the county of Fairfax. And
43 elections for a delegate and senator to the general assembly of this commonwealth, for a member of the house of representatives of the United States, and for electors to choose a president and vice-president of the United States, shall be held at the courthouse of the county of Alexandria. And in all such elections a separate poll shall be held at the tavern house of —— Thompson, at Ball cross roads, which said election shall be conducted according to, and all persons concerned therein governed by the act, entitled 'an act concerning general elections in this commonwealth,' passed the second day of April eighteen hundred and thirty-one, and all subsequent acts and parts of acts concerning general elections in this commonwealth.

5. That the said county of Alexandria shall be annexed to the third judicial district, and compose a part of the sixth judicial circuit of this commonwealth. And a circuit superior court of law and chancery shall be established and held twice in every year, in and for said county, at the courthouse thereof, by the judge of the sixth judicial circuit, who shall receive as additional compensation for holding said courts the sum of three hundred dollars: *Provided, however,* That the additional compensation hereby given shall not extend beyond the expiration of the term of service of the present incumbent.

6. That the sessions of the said circuit superior court of law and chancery shall be held in and for said county on the second Monday in June and November in every year; which said court shall sit until the business thereof shall be despatched, unless the judge holding the same shall sooner be compelled to leave the court in order to arrive in time at the next succeeding court of the circuit.

7. That a county court shall be established and held in and for the county of Alexandria on the first Monday in each month, and the quarterly terms of said court shall be held in the months of March, June, September and November, in every year, and may sit as long as the business of the court may require.

8. That the justices of the peace for said county, hereafter to be commissioned and qualified, in and for said county, (two-thirds or more of said justices being present,) shall proceed at the first session of said court to appoint a clerk of said county court, an attorney for the commonwealth, and a commissioner of the revenue; and shall at the same time nominate to the governor of this commonwealth suitable persons to be commissioned as sheriff and coroner of said county; and may then or thereafter appoint any other officers of said court, or of said county, which by the laws of this commonwealth county courts are empowered to appoint; and to nominate to the governor of this commonwealth for commissions, in the same manner that the other county courts of this commonwealth are empowered to nominate; and in making such appointments and nominations the said courts shall be governed in all respects by the laws of this commonwealth then in force. And the said county of Alexandria shall be entitled to one commissioner of the revenue, who shall receive as compensation for his services a sum not exceeding two hundred dollars; and to three assessors, to be appointed by the governor of this commonwealth, who shall be entitled to receive for their services each the sum of one hundred dollars, to be paid by warrant on the treasury.

9. The board of assessors so appointed, a majority of them concurring, shall forthwith proceed to ascertain the value per acre of each tract of land, and the entire value of each town lot within said county and town of Alexandria, and shall set down such value clearly and distinctly in a table of assessment. The value shall be assessed according to the usual market price of lands and lots reduced by a proper discount to a cash value. The table of the county assessment shall be in the following form and under the following heads, to wit: *Name of owner; Residence; Number of acres of land; Distance and bearing from the courthouse; Rate or value of land per acre, including improvements; Sum added to the value of the land on account of improvements.* In the table of town lots the following heads shall be observed to wit: *Name of owner; Number of each lot according to the plan of the town; Value of each lot including improvements; Sum added on account of improvements.*

10. The said board of assessors in their valuations shall hav power, if their own view and judgment be not satisfactory, to ca upon the owner of any tract of land or lot, or his known agent, t give any information respecting the same on oath if required, an on his failure to give such information on oath if required, he sha forfeit and pay to the commissioner for the use of the Literar fund a fine of one hundred dollars, to be recovered in the cou of the county of Alexandria by motion upon ten days' notice.

11. When the assessors shall have finished their assessment the shall return the same to the court of the county of Alexandri verified by the following oath or affirmation, to be taken by eac of said assessors before some justice of the peace of said county *'I —— —— assessor of the lands and lots in the county of Ale andria, do solemnly swear* (or affirm as the case may be) *that I have impartially, and to the best of my judgment and ability, mad a true and faithful assessment of the lands and lots in the count aforesaid, according to law, and that I believe the table of suc assessment hereto annexed to be correct to the best of my knowl edge and belief. So help me God.'* After the table of assess ment shall have been completed as aforesaid, the same shall b deposited with the clerk of the county court of Alexandria, and true copy thereof shall be forthwith certified by the clerk an transmitted to the first auditor, and another copy thereof to th commissioner of the revenue, for which certified copies a reason able allowance shall be made by the court, payable out of the pu treasury.

12. That the said circuit superior court of law and chancery of Alexandria county, and the judge thereof, and the said county court of the said county, and the justices thereof, shall be veste with and exercise all the powers and jurisdiction which by th constitution and the public and general laws of this common wealth, are vested in the circuit superior courts of law and chancery of this commonwealth, and the judges thereof, and in the county courts of the counties of this commonwealth and the justices thereof, respectively.

13. That all the judgments, decrees, orders and records of th late circuit and criminal courts of the District of Columbia fo Alexandria county, shall be transferred to and become the judg ments, decrees, orders and records of the circuit superior court o law and chancery of Alexandria county, excepting however suc records of the said criminal court as by any act of the congress o the United States, may have been or shall be required to be tran ferred to any other court of the District of Columbia; that all proces original, mesne or final, and all forthcoming bonds issued, or take and returnable to the next term of the said circuit court of the Di trict of Columbia for said county of Alexandria, or to any rule da in the office of the said court, which may be issued before this a goes into operation, shall be returnable to the next term of the sa circuit superior court of law and chancery, or to the rule da

thereof, respectively. And all suits and other proceedings, original or appellate, pending before the said court, whether at the rules or on the docket of the said court, and undetermined finally, shall be transferred to the rules or the court docket of the said circuit superior court of law and chancery, and be there in the same plight and condition as the same were on the docket or at the rules of the said circuit court of the District of Columbia, and that the said circuit superior court shall have and exercise the same power, jurisdiction and control in every respect over the said judgments, decrees, orders, records and suits, and proceedings and motions pending, as the said circuit court of the District of Columbia had; and that any new and ulterior steps and proceedings which may be requisite and taken in the prosecution or defence of any such suits, motions or proceedings pending and undetermined, shall be conformed to the rules of practice and proceedings prescribed by the laws of this commonwealth, or the rules to be adopted by the said circuit superior court of law and chancery, and that the parties thereto may have the benefit of all the rights and remedies provided by the laws of this commonwealth for the government of and procedure in civil suits; *Provided,* That nothing herein contained shall be construed to invalidate anything rightly done in any such suit, motion or proceeding prior to this act, according to the laws in force prior to the date hereof in said county, nor to divest any party of any vested right held and acquired under and according to the said laws: *And provided also,* That all original deeds, contracts, or record books evidencing the sale, transfer, or registry of title deeds of real or personal estate, together with all such other papers, books or records which by the laws of this commonwealth belong to a county court, or a clerk's office thereof, shall be transferred and handed over to the said county court of Alexandria county.

14. That real estate bound by judgments or decrees of the late circuit court of the District of Columbia for Alexandria county, shall continue liable to the satisfaction thereof, to the same extent and in the same manner that it was by the laws of the said county, prior to the commencement of this act; and that the same writs of execution, and none other, may issue from the clerk's office of the circuit superior court for said county, and the same proceedings may be instituted before said court, as would have issued from the office of the circuit court of the District of Columbia, when instituted before said circuit Court; and that the sheriff of said Alexandria county shall, in that behalf, have all the powers of the marshal of the District of Columbia: *Provided however,* That within one year after the passage of this act, the judgments or decrees of the late circuit court for the District of Columbia for Alexandria county, in order to continue a lien on real estate, shall be docketed according to the provisions of an act of the general assembly of this commonwealth, passed the third day of March eighteen hundred and forty-three, entitled 'an act concerning the lien of judgments.'

15. That all chancery attachments pending in the circuit court of the District of Columbia, against persons without the said district, shall be proceeded in and determined in all respects as if the said county of Alexandria had continued beyond the limits of this commonwealth, although the absent defendant in any such suit may be a resident of this commonwealth; and all attachments in chancery, pending in any court of this commonwealth, against any person resident in the county of Alexandria, without the same, shall in like manner be proceeded in and determined in the same manner as if the said county of Alexandria had continued without the limits of this commonwealth, although the absent defendant against whom any such attachment may be pending, may be a resident of the said county of Alexandria.

16. That where any suit, or an issue in any suit or legal proceeding, originating in any civil court of the county of Alexandria, may have been removed to Washington county to be tried, and such trial shall have been had, it shall be lawful for either party to file a transcript of the proceedings had before the court of Washington county, with the certificate of such court, in the clerk's office of the circuit superior court of law and chancery for the county of Alexandria; which court thereupon shall have full power, authority and jurisdiction to proceed in, hear, try and determine the said suit and proceeding in like manner as the circuit court of the United States for Alexandria county, or other court wherein such suit may have originated, or from which such issue may have been originally sent, could have done, the proceedings in all such cases to conform to the mode prescribed by the laws of this commonwealth; and the decision or verdict had in the said court of the District of Columbia for Washington county, shall have the same force and effect before said circuit superior court, that it would have had before the courts of the said district for Alexandria county, under the laws there in force prior to the date of this act.

17. That the governor, with the advice of council, shall appoint thirteen persons, to be commissioned by the governor, as justices of the peace in and for the said county of Alexandria, who shall severally take the oaths prescribed by law, before exercising any duty of their office; which oath may be administered by any justice
47 of the peace of the county of Fairfax.

18. That all accounts, vouchers, records, judgments, decrees, books and papers now filed in or belonging to the orphans and levy courts of Alexandria, and all suits, petitions and proceedings pending in and undetermined before the said courts, (other than those proceedings wherein issues may have been sent from said courts to the circuit court of the District of Columbia,) be transferred to the county court of Alexandria county, and that they shall be considered as accounts, vouchers, records, judgments and decrees, books and papers of the said county court, to all intents and purposes; and the said suits, petitions and proceedings pending and undetermined, may be proceeded in to final judgment, decree or order before said county court as effectually as the same could have been before the said orphans

and levy courts; and the proceedings therein shall conform as nearly as may be to the modes prescribed for like or analogous cases under the laws of this commonwealth.

19. That all persons heretofore acting as justices of the peace for the late county of Alexandria, shall before or during the second quarterly term of the county court of Alexandria county, return and file all the warrants, judgments, executions and papers relating to their late office of justice of the peace, to and in the clerk's office of the county court; that on all such judgments, *supersedeas* bonds or recognizances, executions may issue from the clerk's office of said court as on judgments of said court; and writs of *scire facias* may in like manner issue when necessary; and all cases and warrants pending and undetermined before any justice of the peace at the date of this act, shall be heard and determined by said county court, in a summary manner as the same could have been determined by the justice before whom it was pending at the date of this act; and appeals may be taken from any judgments of any justice of the peace, rendered prior to this act, to the said county court in all cases where an appeal would have lain from such judgments to the circuit court of the District of Columbia.

20. That writs of error, appeals and *supersedeas* may be obtained, taken and allowed from, to and by the supreme court of appeals of this commonwealth, to all judgments, decrees or orders of the late circuit court of the District of Columbia for Alexandria county, unappealed from at the commencement of this act, in the same manner, and with the same effect, as if the said judgments, decrees or orders had been rendered by the circuit superior court of law and chancery for the said county of Alexandria.

21. That the mandate of the supreme court of the United States, certifying its opinion, judgment, decree or order, in any case pending before it at the commencement of this act, or decided prior thereto, on appeal or writ of error from any judgment, decree or proceeding of the circuit court of the District of Columbia for Alexandria county, may be directed to the circuit superior court of law and chancery for said county of Alexandria, which court shall in all respects be bound by and conform to the directions of the same, as the circuit court of the District of Columbia would have been, and shall carry the same into full execution. And when an appeal, writ
48 of error, or *supersedeas* shall be desired from any order, judgment, or decree, or proceeding of the said circuit superior court, in the further progress of any such suit, the same may be had and taken to the court of appeals of this commonwealth, in like manner as from other judgments, decrees, orders and proceedings of the circuit superior courts of law and chancery of this commonwealth.

22. That the sheriff of said county of Alexandria be fully authorized to make a deed or deeds to any purchaser of real estate at any public sale made by the marshal of the District of Columbia within said county, under any judgment or decree, or order of the circuit court of the District of Columbia for Alexandria county, which deed

executed are hereby declared to be as valid to all intents and purposes, as if executed by the marshal of the District of Columbia.

23. That the bonds of executors, administrators, guardians and other fiduciaries and public officers executed in the county of Alexandria, according to the laws thereof, prior to the passage of this act, may be sued on in any of the courts of the county of Alexandria established by this act, in the name of the obligees in such bond, or in such manner as they might have been sued on in the county of Alexandria prior to the passage of this act.

24. That it shall be lawful for any executor or executrix, administrator or administratrix, guardian, committee or other fiduciary, who may have been regularly and lawfully appointed as such by the courts of the county of Alexandria prior to the commencement of this act, to maintain any suit or action, either at law or in equity, in either or any of the courts of the county of Alexandria established by this act, in the same manner as if the appointment of such fiduciary had been made by the courts of this commonwealth; *Provided, however*, That in the settlement of the accounts of such fiduciary, the law of the county of Alexandria prior to the passage of this act, defining the priorities of debts, and prescribing rules for the payment of the same, and the laws defining the powers and duties of such fiduciaries, and for the settlement of said accounts generally, shall continue in force in all such cases.

25. That in all writs of *formedon in descender*, remainder or reverter of any lands, tenements or hereditaments whatsoever, all writs of right and other actions possessory, and in all other actions, whether *ex contractu or ex delicto*, real, personal or mixed, now pending in the circuit court of the United States for the county of Alexandria, and which may be transferred to the circuit superior court of law and chancery for the said county under this act; and in all such writs or actions hereafter instituted within two years from the passage of this act, in the said circuit superior court of law and chancery for the said county, where the title or cause of action has heretofore accrued, the law governing the limitations of such writs and actions respectively in the county of Alexandria, in force prior to and at the time of the commencement of this act, shall as to such writs and actions respectively continue in force and govern the limitation thereof.

26. That all indictments, informations and other criminal
49 proceedings pending in any of the courts of the county of Alexandria at the commencement of this act, shall be transferred to the court of the District of Columbia for the county of Washington, whenever congress shall pass any act providing therefor; and all persons charged with crime who may be in the custody of the jailor of the county of Alexandria, at the commencement of this act, shall be by him delivered over to the marshal of the District of Columbia, upon the requisition of the judge of the criminal court of said district, or to such person, and in such manner, as congress may by law provide.

27. That the county court of the said county of Alexandria, shall have the power of laying a levy on the citizens of said county, for the payment of any debts due thereby at the commencement of this act. And all officers' fees and dues in the hands of the marshal of the District of Columbia at said period, and all levies, poor rates and taxes assessed by the levy court of the county of Alexandria, before that time, shall be collected, accounted for and paid in the like manner as if this act had not been passed.

28. That the common council of Alexandria be, and the same is hereby confirmed in the full use and enjoyment of each and every power, privilege, immunity and franchise secured to or conferred on, or held by it, by or under any act or acts of the general assembly of this commonwealth, passed prior to the cession of the county of Alexandria to the United States, or any act or acts of the congress of the United States since that time; and that the charter of the said corporation, and all the acts in attestation or amendment thereof, in force at the date of this act; are hereby confirmed: *Provided however*, That a public warehouse for the inspection of tobacco shall be established in Alexandria, and the powers and duties belonging or appertaining to the county courts of this commonwealth, relative to the appointment of inspectors and pickers of tobacco, and the inspection of tobacco, shall be and the same are hereby vested in the county court of Alexandria established by this act; and the said county court of Alexandria shall, pursuant to the laws of this commonwealth, appoint an inspector of flour and indian meal for the town, and an inspector of fish for the county of Alexandria; and all the powers and duties regulating the appointment of said inspectors or their deputies, relative to the inspection of flour, indian meal and fish, shall be vested in said county court of Alexandria; an inspector general of lumber shall also be appointed (if it be found necessary) pursuant to the general laws of this commonwealth; and a harbour master shall be appointed by the common council of said town. And that so much of the act of congress passed on the thirteenth day of May eighteen hundred and twenty-six, or of any other act as authorizes the common council of Alexandria to lay any tax on the property or persons within the said town, or to borrow money to promote any improvement for the benefit of said town beyond the limits of said corporation, be and the same is hereby repealed, except as to public improvements commenced and in actual course of construction at the date of this act; and that no such tax shall be laid or money borrowed, without the special sanction of the general assembly of this commonwealth. But nothing herein contained shall be construed to prevent said common council taking and expending any money or fund given to it for the use of said town by deed or will, within or without its limits, for its benefit.

29. That the militia of the said county of Alexandria shall constitute one regiment, to be denominated the one hundred and sixty-fifth regiment of Virginia militia; and the same shall be attached to and constitute a part of the sixth brigade and second

division. The officers now in commission under the acts of congress, and capable of holding office according to the laws of Virginia, shall be re-commissioned by the executive, taking rank according to the dates of the commissions now held by them respectively; and elections shall be held so as to complete the organization of the said regiment; which elections, and all other things pertaining to the militia of said county, shall be in conformity with the several acts of assembly now in force concerning the militia of this commonwealth.

30. This act shall be in force from the twentieth day of March eighteen hundred and forty-seven."

(Laws of Virginia, 1846-'47, 1847-'48, Ch. 53, pp. 41-48.)

Virginia Act to Amend Act Extending Jurisdiction Over Receded Territory.

r. "An Act to amend the act, entitled "an act to extend the jurisdiction of this commonwealth over the county of Alexandria. (Passed March 19, 1847.)

1. *Be it enacted by the general assembly*, That the justices commissioned in pursuance of the act of the general assembly to extend the jurisdiction of this commonwealth over the county of Alexandria, passed the thirteenth of March eighteen hundred and forty-seven, may be qualified in the courthouse of said county of Alexandria, at any time before or on any day of holding the county court for said county.

2. *Be it further enacted*, That the justices of the peace so commissioned and qualified shall be authorized, two thirds or more of the whole number commissioned being present, to proceed to hold a court on the twenty-fifth day of the present month, for the organization of said county court; at which time the justices may proceed to appoint a clerk of the county court, an attorney for the commonwealth and a commissioner of the revenue for the said county, and may at the same time nominate to the governor suitable persons to be commissioned as sheriff and coroner of said county.

3. This act shall be in force from the passing thereof."

(Laws of Virginia, 1846-'48, Ch. 54, p. 48.)

51 *Act of Virginia to Name Arbitrators to Fix True Boundary Line Between Md. & Va.*, 1874.

s. "An Act to Designate the Arbitrators to Ascertain and fix the Boundary between the States of Maryland and Virginia. (Approved March 28, 1874.)

Whereas, a controversy exists as to the true line of boundary between the states of Maryland and Virginia; and whereas, the state

of Maryland, by resolutions of its general assembly now in session, has declared its willingness to submit the said controversy to arbitration, and to accept as final and conclusive such award as may be made in the premises; therefore—

1. Be it enacted by the general assembly of Virginia, That the settlement and determination of the true line of boundary between the states of Maryland and Virginia be referred to the Honorable Jeremiah S. Black of Pennsylvania, and the Honorable William A. Graham of North Carolina, and a third person to be selected by them, who are hereby requested to act as arbitrators, and to ascertain and determine the true line of boundary between the said states of Virginia and Maryland, and to make and deliver their award in writing, any two of them concurring therein. Each state shall have the right to be represented by counsel before said arbitrators, subject to such regulations as they may prescribe. And the state of Virginia hereby pledges its faith to accept and abide by the award of said arbitrators in the premises, as final and conclusive: provided, further, that neither of the said states, nor the citizens thereof, shall by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the compact between them entered into in the year seventeen hundred and eighty-five, but that the same shall remain to and be enjoyed by the said states and the citizens thereof forever.

2. And be it further enacted, That until the final adjustment and settlement of the said line of boundary, the temporary line across the Chesapeake bay known as the Lovett-Davidson line shall be faithfully observed by the citizens of the said two states.

3. The governor is hereby requested to forward a copy of this act to the governor of Maryland, with a request that he present the same to the general assembly of that state for their concurrent action in the premises.

4. This act shall be in force from its passage."

(Laws of Virginia, 1874, Ch. 135, pp. 151-152.)

Act of Maryland to Name Arbitrators to Fix True Boundary, &c., 1874.

1. "An Act to designate the arbitrators to ascertain and fix the boundary between the States of Virginia and Maryland.

Whereas, a controversy exists as to the true line of the boundary between the States of Virginia and Maryland; and,

Whereas, the State of Virginia, by an act of its General
52 Assembly, entitled an act to designate the arbitrators to ascertain and fix the boundary between the States of Maryland and Virginia, approved on the twenty-eighth day of March, in the year of our Lord, one thousand eight hundred and seventy-four, has declared

its willingness to submit the said controversy to arbitration, and to accept as final and conclusive, such award as may be made in the premises; therefore—

Section 1. *Be it enacted by the General Assembly of Maryland*, That the settlement and determination of the true line of boundary between the states of Virginia and Maryland, be referred to the Honorable Jeremiah S. Black, of Pennsylvania, and the Honorable William A. Graham, of North Carolina, and a third person to be selected by them, who are hereby requested to act as arbitrators, and to ascertain and determine the true line of boundary between the said States of Virginia and Maryland, and deliver their award in writing, any two of them concurring therein. Each State shall have the right to be represented by counsel before said arbitrators, subject to such regulations as they may prescribe; and the State of Maryland hereby pledges its faith to accept and abide by the award of said arbitrators in the premises as final and conclusive; provided, however, that neither of the States, nor the citizens thereof, shall, by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the compact between them entered into in the year seventeen hundred and eighty-five, but that the same shall remain to and be enjoyed by the said States and the citizens thereof, forever.

Sec. 2. *And be it enacted*, That until the final adjustment and settlement of the said line of boundary, the temporary line across the Chesapeake Bay, known as the Lovett-Davidson line, shall be faithfully observed by the citizens of the said two States; and the Governor is hereby requested to forward a copy of this act to the Governor of Virginia.

Sec. 3. *And be it enacted*, That this act shall be in force from its passage.

Approved, April 11th, 1874."

(Laws of Maryland, 1874, Chap. 247, pp. 363-364.)

Virginia Act to Amend Act Naming Arbitrators, &c., 1876.

u. "An Act to amend and re-enact an act to designate the Arbitrators to Ascertain and Fix the Boundary of the States of Maryland and Virginia, approved March twenty-eighth, eighteen hundred and seventy-four.

Approved February 10, 1876.

Whereas, by an act of the general assembly, approved March twenty-eighth, eighteen hundred and seventy-four, entitled an act to designate the arbitrators to ascertain and fix the boundary between the states of Maryland and Virginia, it was provided that the settlement and determination of the true line of boundary between

the states of Maryland and Virginia be referred to the Honor-
53 able Jeremiah S. Black, of Pennsylvania, and the Honorable William A. Graham, of North Carolina, and a third person to be selected by them, and they did select accordingly, as a third person, the Honorable Charles A. Jenkins, of Georgia, but the said William A. Graham has since depart- this life; now, for filling the vacancy thereby created, and for carrying out the purposes of the said act; therefore,

1. Be it enacted, with the concurrence of the state of Maryland, That the said Honorable Jeremiah S. Black and Honorable J. B. Beck of Kentucky, with the said Honorable Charles A. Jenkins, as arbitrators, do proceed to ascertain and determine the true line of boundary between the said states of Maryland and Virginia, and do make and deliver their award in writing, any two of them concurring therein. Each state shall have the right to be represented by counsel before the arbitrators, under such regulations as they may prescribe. And the state of Virginia hereby pledges its faith to accept and abide by the award of the said arbitrators in the premises, as final and conclusive: provided however, that neither of the said states, nor the citizens thereof, shall by the decision of the said arbitrators be deprived of any of the rights and privileges enumerated and set forth in the compact between them, entered into in the year seventeen hundred and eighty-five, but that the same shall remain to and be enjoyed by the said states and the citizens thereof forever; and provided further, that the landholders on either side of the line of boundary between the said states, as the same may be ascertained and determined by the said award, shall in no manner be disturbed thereby in their title to and possession of their lands, as they may be at the date of said award, but shall in any case hold and possess the same, as if their said titles and possession had been derived under the laws of the state in which, by the fixing of the said line by the terms of the said award, they may be ascertained to be.

2. And be it further enacted, That until the final adjustment and settlement of the said line of boundary, the temporary line across the Chesapeake bay, known as the Lovett-Davidson line, shall be faithfully observed by the citizens of the said two states.

3. Be it further enacted, That if, in the recess of the legislature, a vacancy shall occur by reason of the death, resignation, or refusal to act of any of the persons herein appointed to settle and determine the said line of boundary as aforesaid, a fit person or persons shall be appointed by the concurrent action of the governor of Virginia and of the governor of Maryland, or of the legislature of the latter state, as the case may be, who with those already appointed and who may act in the premises, shall exercise the powers and perform the duties defined and imposed in the first section of this act.

4. The governor is hereby request- to forward a copy of this act to the governor of Maryland, with a request that he present the same to the general assembly of that state for their concurrence in the

premises, and that he communicate to the Honorable James B. Beck his appointment under this act and request his acceptance of the same.

5. This act shall be in force from its passage."

(Laws of Virginia, 1875-1876, Ch. 48, pp. 39-40.)

54 *Maryland Act to Amend, Naming Arbitrators, &c.*, 1876.

v. "AN ACT supplementary to an act to designate the arbitrators to ascertain and fix the boundary between the States of Virginia and Maryland, approved April the eleventh, eighteen hundred and seventy four.

WHEREAS, by an act of the General Assembly of Maryland, passed at the January session, eighten hundred and seventy-four, chapter two hundred and forty-seven, entitled "an act to designate the arbitrators to ascertain and fix the boundary between the States of Virginia and Maryland;" it was provided, that the settlement and determination of the true line of boundary between the States of Virginia and Maryland, be referred to the Honorable Jeremiah S. Black, of Pennsylvania, and the Honorable William A. Graham, of North Carolina, and a third person to be selected by them, and they did select accordingly as a third person, the Honorable Charles A. Jenkins, of Georgia, but the said William A. Graham has since departed this life, now for filling the vacancy thereby created; and for carrying out the purposes of the said act; therefore,

SECTION 1. *Be it enacted by the General Assembly of Maryland*, with the concurrence of the State of Virginia, That the said Honorable Jeremiah S. Black, and the Honorable James B. Beck, of Kentucky, and the said Honorable Charles A. Jenkins, do proceed to ascertain and determine the true line of boundary between the States of Virginia and Maryland, and do make and deliver their award in writing, any two of them concurring therein. Each State shall have the right to be represented by counsel before the arbitrators under such regulations as they may prescribe, and the State of Maryland hereby pledges its faith to accept and abide by the award of the said arbitrators in the premises, as final and conclusive; provided, however, that neither of the said States, nor the citizens thereof, shall by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the compact between them, entered into in the year seventeen hundred and eighty-five; but that the same shall remain to, and be enjoyed by the said States, and the citizens thereof forever; and provided further, that the landholders on either side of the line of boundary between the said States as the same may be ascertained and determined by the said award, shall in no manner be disturbed thereby in their title to and possession of their lands, as they may be at the date of said award, but shall in any case, hold and possess the same as if their said titles and possession had been derived under the laws of

ıe State, in which, by the fixing of the said line by the terms of ıe said award, they may be ascertained to be.

Sec. 2. *And be it enacted,* That until the final adjustment and ttlement of the said line of boundary, the temporary line across ıe Chesapeake bay, known as the Lovett-Davidson line, shall be ithfully observed by the citizens of the said two States.

Sec. 3. *And be it enacted,* That if, in the recess of the Legislature a vacancy shall occur by reason of the death, resignation or refusal to act, of any of the persons herein appointed to settle and determine the said line of boundary as aforesaid, a fit erson or persons shall be appointed by the concurrent action of ıe Governor of Maryland, and the Governor of Virginia, or of the egislature of the latter State, as the case may be, who with those ready appointed, and who may act in the premises, shall exercise ıe powers and perform the duties defined and imposed in the first ction of this act.

Sec. 4. *And be it enacted,* That the Governor is hereby requested forward a copy of this act to the Governor of Virginia, with a reıest that he present the same to the General Assembly of that State ıd that he communicate to the Honorable James B. Beck, his apointment under this act, and request his acceptance of the same.

Sec. 5. *And be it enacted,* That this act shall take effect from the ıte of its passage.

Approved April 3, 1876.

(Laws of Maryland, 1876, Ch. 198, pp. 317–318.)

Opinion of Arbitrators.

w. Extract from the opinion of Jeremiah S. Black and Charles J. nkins, two of the arbitrators in the above arbitration. (See origil copy of Opinions and Award of Arbitrators on the Maryland and irginia Boundary Line, Lib. Cong., Ch. F. 232, Sh. B 7 B 66, filed the record of the equity suit in the Supreme Court of the United ates of *Maryland v. West Virginia.*)

"When a river is called for as a boundary between two adjacent rritories, (whether private property or public domains,) the line ns along the middle thread of the water. A concession of lands a stream does not stop at one bank or cross over to the other, but ds its limit midway between them. But a river may be included excluded, if the parties choose to have it so. If the intent is exssed that the line shall be upon one bank or another, the mere ce of construction cannot put it anywhere else. The natural terpretation is the legal and proper one.

This is too obviously just to need the support of authority. But was well illustrated by the Supreme Court of the United States, in e case of Ingersoll *v.* Howard, (13 How., 381.) Alabama claimed the middle of the Chattahoochee by virtue of a boundary described

in a concession from Georgia thus: "Beginning *on the western ban* of the Chattahoochee river, where the same crosses the boundary lin between the United States and Spain; running thence up the sai river and along the western bank thereof," &c. The court held th these words established the line of boundary upon the western ban There is some resemblance between that case and the one under co sideration.

The northern boundary of Maryland is by the charter to run wes ward to the true meridian of the first fountain of the Potomac. Th point being ascertained, it shall turn at right angles and run t wards (literally against) the south—"*vergendo versus meridiem*"- where? "*ad ulteriorem predicti fluminis ripam*"—to th
56 further bank of the aforesaid river. Approaching the riv from the north, the further bank is the south bank of cours The description proceeds, without a pause, thus: "*et eam sequen qua plaga occidentalis ad meridionalem spectat usque ad locu quendam appellatum* Cinquack." Now, the words "*eam sequend* are a direction that something shall be followed in running the li between the point already fixed on the south bank of the Potoma where it rises in the mountain and Clinquack, which is on the sam side of the river, near to its mouth. What shall we follow? Clear *eam ripam* and clearly not *id flumen*, if we take the grammatical sen of the phrase. Another consideration impresses us a good de Lawyers in the reign of Charles I wrote Latin in the idiom of the v nacular tongue. We would naturally expect to see the thought these parties expressed by words arranged in the English order, th *ad ulteriorem ripam predicti fluminis et sequendo eam*. The oth and more classical collocation was not adopted for its euphony, b for the sake of precision. It brought *ripam* and *eam* into close ju taposition, and made the antecession so immediate that it could n be mistaken. The interjected phrase, "*qua plaga occidentalis meridionalem spectat*," has had its share of the minute verbal cri cism bestowed upon the whole document; but we see nothing in except an attempt (perhaps not very successful) to describe the aspe of the Western Shore, where it turns to the south. Certainly the is nothing there which requires the line to leave the river ban Apart from all this, it looks utterly improbable that the two *term* of this line should both have been fixed on the south side of the ri without a purpose to put the line itself on the same side. The inte of the charter is manifest all through to include the whole ri within Lord Baltimore's grant. It seems to us a clearer case th that decided in *Ingersoll v. Howard*.

For these reasons we conclude that the charter line was on t right bank of the Potomac, where the high-water mark is i pressed upon it, and that line follows the bank along the wh course of the river, from its first fountain to its mouth and "*usq ad locum quendam appellatum Cinquack*.

* * * * * * *

If we are right thus far, it follows that the original line as fi and agreed by the King and Lord Baltimore runs from Cinqu

by a straight line to the extreme southwestern part of Somerset county, Maryland, which we find to be the true Watkins' Point of the charter, and thence by a straight line to the Atlantic ocean. These lines will be seen on the accompanying map, marked and shaded in blue.

But this is not the present boundary. How firmly soever it may have been fixed originally, a compact could change it, and long occupation inconsistent with the charter is conclusive evidence of a concession which made it lawful.

Usucaption, prescription, or the acquisition of title founded on long possession, uninterrupted and undisputed, is made a rule of property between individuals by the law of nature and the municipal code of every civilized country. It ought to take place
57 between independent States, and according to all authority it does. There is a supreme necessity for applying it to the dealings of nations with one another. Their safety, the tranquillity of their peoples, and the general interests of the human race do not allow that their territorial rights should remain uncertain, subject to dispute, and forever ready to occasion bloody wars. (See Vattel, Book II, chap 11, and Wheaton, Part II, chap. 4, sec. 4, citing Grotius Puffendorf and Rutherford.) The length of time which creates a right by prescription in a private party raises a presumption in favor of a State, that is to say, twenty years. (Knapp's Rep., 60 to 73.) It is scarcely necessary to add that the exercise of a privilege, the perception of a profit, or the enjoyment of what the common law calls an easement, has the same effect as the possession of corporeal property. It behooves us, then, to see whether the acts or omissions of these States have or have not materially changed their original rights and modified their boundaries, as described in the charter. We will look first at the Potomac.

The evidence is sufficient to show that Virginia, from the earliest period of her history, used the South bank of the Potomac as if the soil to low water-mark had been her own. She did not give this up by her Constitution of 1776, when she surrendered other claims within the charter limits of Maryland; but on the contrary, she expressly reserved "the property of the Virginia shores or strands bordering on either of said rivers (Potomac and Pocomoke), and all improvements which have or will be made thereon." By the compact of 1785, Maryland assented to this, and declared that "the citizens of each State respectively shall have full property on the shores of Potomac and adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements." We are not authority for the construction of this compact, because nothing which concerns it is submitted to us; but we cannot help being influenced by our conviction (Chancellor Bland nothwithstanding) that it applies to the whole course of the river above the Great Falls as well as below. Taking all together, we consider it established that Virginia has a proprietary right on the south shore to low water-mark, and, appurtenant thereto, has a privilege to erect any structures connected with the shore which may be necessary to the

full enjoyment of her riparian ownership, and which shall not in
cede the free navigation or other common use of the river as a publ
highway.

To that extent Virginia has shown her rights on the river so clear
as to make them indisputable." (pp. 6-8, 14-16.)

As appears from the printed copy of the opinion and award
the Arbitrators, on file in State Library of Maryland, at Annapol
Mr. Beck concurred as to the boundary line on the Potomac Riv
but dissented as to line on Eastern Shore of Virginia and Marylan

Virginia Act, 1878, Accepting Award.

x. "An Act to approve, confirm, and ratify the award made
the arbitrators appointed to ascertain and fix the boundary betwe
the states of Virginia and Maryland, and procure the asse
58 of the congress of the United States thereto.

Approved March 14, 1878.

Whereas, by an act of the general assembly of Virginia, approv
March twenty-eight, eighteen hundred and seventy-four, and
act amendatory thereof, approved February tenth, eighteen hundr
and seventy-six, it was provided that the settlement and determin
tion of the true line of boundary between the states of Virginia a
Maryland should be referred to the Honorable Jeremiah S. Black
Pennsylvania, the Honorable James B. Beck of Kentucky, and t
Honorable Charles A. Jenkins of Georgia, with power to make a
deliver their award in writing, any two of them concurring therei
and did thereby pledge the faith of this state to accept and abide
the award of said arbitrators, as to said boundary line, as final a
conclusive, with the proviso and saving clauses as to private rig
as in the said acts set forth; and whereas the said arbitrators did p
ceed in the premises to examine into and ascertain the true line
said boundary, and did award as to the same in words following,
wit:

Award.

And now, to wit: January sixteenth, anno domini eighte
hundred and seventy-seven, the undersigned, being a majority of t
arbitrators to whom the states of Virginia and Maryland, by acts
their respective legislatures, submitted the controversies concerni
their territorial limits, with authority to ascertain and determine t
true line of boundary between them, having heard the allegations
the said states, and examined the proofs on both sides, do fin
declare, award, ascertain, and determine that the true line of bou
dary between the said states, so far as they are coterminous wi
one another, is as follows, to wit:

Beginning at the point on the Potomac river where the line
tween Virginia and West Virginia strikes the said river at lo
water mark, and thence, following the meanderings of said riv
by the low-water mark, to Smith's point, at or near the mouth

the Potomac, in the latitude thirty-seven degrees, fifty-three minutes, eight seconds, and longitude seventy-six degrees, thirteen minutes, forty-six seconds; thence crossing the waters of the Chesapeake bay, by a line running north sixty-five degrees, thirty minutes east, about nine and a half nautical miles, to a point on the western shore of Smith's island, at the north end of Sassafras hammock, in latitude thirty-seven degrees, fifty-seven minutes, thirteen seconds, longitude seventy-six degrees, two minutes, fifty-two seconds; thence across Smith's island, south, eighty-eight degrees, thirty minutes east, five thousand six hundred and twenty yards, to the centre of Horse hammock, on the eastern shore of Smith's island, in latitude thirty-seven degrees, fifty-seven minutes, eight seconds, longitude seventy-five degrees, fifty-nine minutes, twenty seconds; thence south seventy-nine degrees, thirty minutes east, four thousand, eight hundred and eighty yards, to a point marked "A" on the
59 accompanying map, in the middle of Tangier sound, in latitude thirty-seven degrees, fifty-six minutes, forty-two seconds, longitude seventy-five degrees, fifty-six minutes, twenty-three seconds, said point bearing from Jane's island light, south, fifty-four degrees west, and distant from that light three thousand five hundred and sixty yards; thence south ten degrees, thirty minutes, west four thousand seven hundred and forty yards, by a line dividing the waters of Tangier sound to a point where it intersects the straight line from Smith's point to Watkins' point, said point of intersection being in latitude thirty-seven degrees, fifty-four minutes, twenty-one seconds; longitude seventy-five degrees, fifty-six minutes, fifty-five seconds, bearing from Jane's island light south, twenty-nine degrees west, and from Horse hammock, south, thirty-four degrees, thirty minutes east; this point of intersection is marked "B" on the accompanying map; thence north eighty-five degrees, fifteen minutes, east, six thousand seven hundred and twenty yards along the line above mentioned, which runs from Smith's point to Watkins' point until it reaches the latter spot, namely, Watkins' point, which is in latitude thirty-seven degrees, fifty-four minutes, thirty-eight seconds; longitude seventy-five degrees, fifty-two minutes, forty-four seconds; from Watkins' point, the boundary line runs due east seven thousand eight hundred and eighty yards, to a point where it meets a line running through the middle of Pocomoke sound, which is marked "C" on the accompanying map, and is in latitude thirty-seven degrees, fifty-four minutes, thirty-eight seconds; longitude seventy-five degrees, forty-seven minutes, fifty seconds; thence by a line dividing the waters of Pocomoke sound, north forty-seven degrees, thirty minutes, east five thousand two hundred and twenty yards, to a point in said sound marked "D" on the accompanying map, in latitude thirty-seven degrees, fifty-six minutes, twenty-five seconds, longitude seventy-five degrees, forty-five minutes, twenty-six seconds; thence following the middle of the Pocomoke river by a line of irregular curves, as laid down on the accompanying map, until it intersects the westward protraction of the boundary line marked by Scarborough and Calvert, May twenty-eight, eighteen hundred and sixty-eight, at a point in the middle of Pocomoke river, and in the latitude thirty-seven degrees, fifty-nine minutes, thirty-seven seconds.

longitude seventy-five degrees, thirty-seven minutes, four seconds; thence by the Scarborough and Calvert line, which runs five degrees, fifteen minutes north of east, to the Atlantic ocean; the latitudes, longitudes, courses, and distances here given have been measured upon the Coast Chart, number thirty-three, of the United States coast survey (sheet number three, Chesapeake bay), which is herewith filed as part of this award, and explanatory thereof; the original charter line is marked upon the said map and shaded in blue; the present line of boundary, as ascertained and determined, is also marked and shaded in red, while the yellow indicates the line referred to in the compact of seventeen hundred and eighty-five, between Smith's point and Watkins' point; in further explanation of this award, the arbitrators deem it proper to add that—

60 First. The measurements being taken and places fixed according to the coast survey, we have come as near to a perfect mathematical accuracy as in the nature of things is possible; but in case of any inaccuracy in the described course or length of a line, or in the latitude or longitude of a place, the natural objects called for must govern.

Second. The middle thread of Pocomoke river is equidistant as nearly as may be, between the two shores, without considering arms, inlets, creeks, or affluents as parts of the river, but measuring the shore lines from headland to headland.

Third. The low-water mark on the Potomac, to which Virginia has a right in the soil, is to be measured by the same rule, that is to say, from low-water mark at one headland to low-water at another, without following indentations, bays, creeks, inlets or affluent rivers.

Fourth. Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of seventeen hundred and eighty-five.

In testimony whereof we have hereunto set our hands the day and year aforesaid.

J. S. BLACK,
Of Pennsylvania.
CHARLES J. JENKINS,
Of Georgia.

A. W. GRAHAM, *Secretary.*

And which award is now deposited, with the map accompanying the same, in the office of the secretary of the commonwealth; now, therefore,

1. Be it enacted by the general assembly of Virginia, That the said award is hereby approved, accepted, confirmed, and ratified, and

at as soon as the same is also approved, accepted, confirmed, and tified by the general assembly of the state of Maryland, and by the ngress of the United States, thereupon and immediately there- ter the said award and survey, matter and thing therein contained all be obligatory on the state and the citizens thereof, and shall be rever faithfully and inviolably observed and kept by this state and its citizens, according to the true intent and meaning of the same, d to that end the faith of this state shall stand pledged.

2. The governor is hereby requested to forward a copy of this act the governor of Maryland, with a request that the general assem- y of said state shall also enact a law in accordance herewith; and all also forward a copy to our senators and representatives in con- ess, with a request that they procure such legislation on the part the United States as may be needful in the premises for their ent to and ratification of said award.

3. This act shall be in force from its passage.

(Laws of Virginia, 1877-1878, Ch. 246, pp. 233-236.)

Maryland Act 1878, *Accepting Award.*

y. "An Act to approve, confirm and ratify the award made by the norable Jeremiah S. Black, James B. Beck and Charles A. Jen- s, arbitrators appointed to ascertain and fix the boundary between States of Virginia and Maryland.

Whereas by an act of the General Assembly of Maryland, passed at nuary session, eighteen hundred and seventy-six, chapter one ndred and ninety-eight, it was provided that the settlement and ermination of the true line of boundary between the States of rginia and Maryland should be referred to the Honorable Jere- ah S. Black, of Pennsylvania, the Honorable James B. Beck, of ntucky, and the Honorable Charles A. Jenkins, of Georgia, with wer to make and deliver their award in writing, any two of them ncurring therein, and did thereby pledge the faith of this State to ept and abide by the award of said arbitrators, as to said boundary e as final and conclusive, with the proviso and saving clauses, as private rights, as in the said act set forth; and, whereas the said itrators did proceed in the premises to examine into and ascertain true line of said boundary, and did award as to the same in words lowing, to wit:"

(Here follows a recital of the award in the same words and figures hereinbefore set out in the Maryland Act.)

'And which said award is now deposited with the map accom- ying the same in the Land Office of this State, among the muni- nts of title; now, therefore,

Section 1. *Be it enacted by the General Assembly of Maryland*, at the said award is hereby approved, accepted, confirmed and ified, and that as soon as the same is also approved, accepted, con-

firmed and ratified by the General Assembly of the State of Virginia and by the Congress of the United States, thereupon and immediately thereafter the said award and survey, matter and things therein contained shall be obligatory on the State and the citizens thereof, and shall be forever faithfully and inviolably observed, and kept by this State and all its citizens, according to the true intent and meaning of the same, and to that end the faith of this State shall stand pledged.

Sec. 2. *And be it enacted,* That the Governor is hereby requested to forward a copy of this act to the Governor of Virginia, with a request that the General Assembly of said State shall also enact a law in accordance herewith; and, shall, also, forward a copy to our Senators and Representatives in Congress, with a request that they procure such legislation on the part of the United States as may be needful in the premises for their assent to and ratification of said award.

Approved April 4, 1878."

(Laws of Maryland, 1878, Ch. 274, pp. 436-440.)

62 *Act of Congress* 1879, *Approving Award & Boundary.*

z. "Chap. 196. An act giving the consent of Congress to an agreement or compact entered into between the States of Virginia and Maryland respecting the boundary between said States.

Whereas arbitrators duly appointed on the part of the State of Virginia and on the part of the State of Maryland for the purpose of ascertaining and fixing the boundary between the States of Virginia and Maryland, did proceed in the premises to examine into and ascertain the true line of said boundary, and did award as to the same in words following, to wit:"

(Here follows a recital of the award in the same words and figures as hereinbefore set out in the Virginia act.)

And whereas the said award has been ratified and confirmed by the legislatures of the States of Virginia and Maryland respectively:

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress of the United States is hereby given to the said agreement or award, and to each and every part and article thereof:

Provided, That nothing therein contained shall be construed to impair or in any manner affect any right of jurisdiction of the United States in and over the islands and waters which form the subject of the said agreement or award.

Approved, March 3, 1879."

(20 U. S. Stat., Ch. 196, pp. 481-483.)

Howsing Patent, 1669.

&The Howsing patent for 6000 acres, lying and being on the freshes of the Potomac River, etc.

(1) To all &c. whereas &c Now Know yee that I the said Sr. Wm. Berkeley Knt. Governor &c. give and grant unto Mr. Robt. Howsing six thousand acres of land scituate lying and being upon the freshes of Potomack River on the west side thereof above the dividing branches of ye same beginning at a red oake standing by a small branch or a run of water neare opposite to a small Island commonly called and known by the name of my Lords Island extending downe Potomack River various courses 3152 po. makeing a S. Wtly line to a *pokecory* standing at the north point of a creek named by the English Indian Cabin Creeke wch. Creeke divides this land and a tract of land surveyed for Jno. Mathewes from the said pokecory N. W. and by W. up the said Creeke and maine branch 720 po. from thence N 1940 po. finally E 720 po to the red oake begun at including sev'all small creekes or inlets for the said quantity. The said land being due pr Trans of 120 psons &c

63 To have and to hold &c. To be held &c. Yeilding and paying, &c.

Dated ye one and twentyeth day of October 1669.

Mr. Howsing 4 time	Ja. Towne	Sem Pike	
Giles Cable	Robt Dooeby	Fran. Trotter	
Robt Young	Pet Skinner	Jno Holmes	
[illegible]	Ogro Dumford	Alex Fisher	
[illegible]	Eliz Burton	Tho Palmer	
Peter Haseby	Nich Whitehead	Wm Salmon	
Mary Plum	Rash Day	Phill Watson	
Wm. Price	Robt. Young	Sam Gipson	
Tho. Davis	Jno Suttle	Jno Porter	
Jno Sprart	Jo Newberry	Tim Shelly	
Tho Dray	Rich Freeman	Ra. Hopkins	
Edwd Kent	Theo Griffin	Tho. Fletcher	
Jeremy Pibold	Tho Cooke	Sy. Haynes	
Jno Leake	Jno. Lane	Jno Wells	
Jo. Truman	Robt. King	Patrick West	
Lan Mosely	Ja Moss	Ja. Hunter	
Tho Thruston	Rich Norton	Bar. Bowser	Cisly Serby
Jno Hudson	Miles Gray	Rich Carter	Robt. Parke
Hen Luxton	Jno Hughill	Ed. Boyscot	Sara Knowle
Jofras Franklin	Lott Richeson	Jo. Dew	Ma Edwards
Hen. Pratt	Tho. Suckett	Saml. Farmer	Frn. Werkly
Jno Bates	Wm Cox	Jno Norris	Kath Smith
Mary Standly	Mary Wilkinson	Ed. Norris	Jane Massell
Ed. Seaman	Geo. Hollis	Ro. Stapler	Tho. Killip
Wm Hobson	Jeff Wormeley	Jo. Stapler	Jno. Maxey
Row. Lawson	Sym. Harper	Mar. Copeland	Fra. Cogan
Jno Porks	Susan Waxpin	Mary Potter	Tho. Sherer
Evan Pressey	Mar. Preston	Al. Barber	Jno. Allen
	Morris Dixon	Susan Phelps	David Taylo
		Do. Hobson	Geo. Green
		An. Percott	Hum. Wilso
		Ma. Herbert	Tho Lawrick
			Cha. Hudso
			Ten Negroes
			Robt. Foste

STATE LAND OFFICE, RICHMOND, VIRGINI

I hereby certify that the foregoing is a true copy from the
ords of this office. Witness my hand and seal of office this
twenty sixth day of September, 1910.

(Signed) JNO. W. RICHARDSON.
Register of the Land Office

(2) Plat No. 9 showing the Howsing patent.

64 V.

On behalf of the Marine Railway & Coal Company, Incorpora
the following is offered in evidence:

a. That the following plans, plats and surveys showing the location of the area of land in the declaration mentioned, filed herewith, are genuine originals, or correct and authenticated copies of the originals made at the dates respectively specified.

1. A copy of the plat or chart (No. 13) of the Potomac River, Alexandria Canal Company 1838, made in pursuance of the resolution of the Alexa. Canal Company, Oct. 1838, compiled from the survey of Lieut. Col. Kearney, Major Turnbull, U. S., T. E. (the same as already offered II *b* 6), upon which has been drawn for illustration the eastern boundary line of the town of Alexandria, on the Potomac River from Jones's Point north in 1785 as defendant claims it to be defined by the Act of Assembly of Virginia of 1785.

2. Plat or chart (No. 14), being a photographic copy of the plan of the town of Alexandria in the District of Columbia 1798, published by I. N. Thomas.

3. Plat or chart (No. 15), being a photographic copy of the Coast & Geodetic Survey, Preliminary Chart of the Potomac River of 1862, upon which have been drawn for illustration (*a*) the corporate limits of the city of Alexandria from February 24, 1860, up to the date of the institution of this suit, as defendant claims them to be defined in the several Acts of the Assembly of Virginia also noted on said plat, as well as (*b*) the location of the retaining wall built by the Government, as before referred to in this stipulation, and its relation to said boundary lines.

On behalf of the Marine Railway & Coal Company, Incorporated, the following Acts of the General Assembly of Virginia are also offered in evidence:

(*a*) *An act to encourage the further settlement of the town of Alexandria, in the county of Fairfax.*

I. WHEREAS by an act of assembly, passed in the twenty-second year of the reign of his late majesty king George the second, for erecting a town at Hunting creek warehouse, in the county of Fairfax, which was established by the name of Alexandria, the proprietors of the lots in the said town were injoined to improve the same in the manner, and within the time, thereby directed and limited.

II. And whereas by another act, passed in the third year of his present majesty's reign, for enlarging the town of Alexandria, a parcel of land and marsh adjoining was added to and made part of the said town, and the proprietors and purchasers of such marsh lots, were exempted from the forfeiture prescribed by the said first recited act, for not building thereon within the time limited thereby, but directed to drain the same, in such manner as the trustees of the said town should appoint, under penalty of forfeiting such lots.

III. And whereas by another act, passed in the fourth
65 year of his present majesty's reign, for encouraging the towns of Alexandria and Falmouth, and for other purposes therein mentioned, so much of the two first recited acts, as related to the improvement of the lots in the said town of Alexandria, within a limited time, were repealed, and the purchasers set at liberty to build thereon, when they should think fit, by means whereof the said marsh lots still remain undrained and unimproved, to the great prejudice of the health of the present inhabitants, and delay of the further settlement and growth of the said town; *Be it therefore enacted, by the Governor, Council, and Burgesses, of this present General Assembly, and it is hereby enacted, by the authority of the same,* That the owners and proprietors of the said marsh lots shall, at their own proper expence, drain the same, in such manner as the trustees of the said town shall direct, within two years from and after the passing of this act. And if any such owners or proprietors shall neglect or refuse so to do, he, she, or they, shall forfeit their lots, and the same shall be revested in the said trustees, and shall and may be sold and conveyed, by them, to any other person, or persons, whatsoever; and the money arising from the sale of such lots shall be by the said trustees, from time to time, applied to such use, for the common benefit of the inhabitants of the said town, as to them shall seem proper: *Provided nevertheless,* That no forfeiture of any such marsh lots as belong to infants, or persons out of the country, shall be incurred for want of such draining; but the trustees shall be at liberty to do the same, and the guardian of such infants, or the attorney of such persons not resident in the country, shall be obliged to repay to the trustees the expence thereof, if so much they shall or may have in their hands of the estate and effects of such proprietors of the said lots.

IV. *And be it further enacted, by the authority aforesaid,* that so much of the said recited act, of the fourth year of his present majesty's reign, as is contrary hereto, be and the same is hereby repealed.

V. And whereas it is represented, by the said trustees, that the wharf at Point West, in the said town, originally built by the public was afterwards rebuilt by them, at a considerable expence, and that the same is now in a ruinous condition, occasioned chiefly by ships, and other vessels heaving down by and mooring at the said wharf; and the said trustees have petitioned that such a wharfage may be imposed upon such vessels as will enable them to repair and extend the same: *Be it therefore enacted, by the authority aforesaid,* That from and after the passing of this act, the said wharf shall be and the same is hereby vested in the said trustees, and their successors, forever, and that they, or the major part of them, shall, from time to time, have power to lay and assess such wharfage on all ships, and other vessels, heaving down by and mooring at the same under such regulations, and to be collected in such manner, as they or the major part of them, shall think proper, to be by them applied to and for the uses and purposes of repairing and extending the

said wharf: *Provided always,* That the said wharfage shall not extend to any country craft, or vessel bringing tobacco to, or taking it from, the public warehouses in the said town, but that such craft shall, at all times, have free access to the said wharf, clear of any expence whatever, and moreover shall have the preference in loading and unloading at the same: *Provided also,* The public shall hereafter be exempted and discharged from any future expence or cost in rebuilding, repairing, or enlarging the said wharf; any law, usage, or custom, to the contrary thereof, in any wise, notwithstanding.

(8 Hening's Statutes at Large, 1764–1773 (February, 1772), Ch. LII, p. 613.)

(b) An act to confirm certain sales and leases made by the trustees of the town of Alexandria, and to enlarge the said town.

WHEREAS it hath been represented to this present general assembly, that the trustees of the town of Alexandria have sold and conveyed, as well as leased certain parcels of ground and sunken lands within the said town and adjoining sundry lots thereof, the proprietors whereof are apprehensive that such sales and leases may hereafter be controverted on suggestion, that the said trustees were not, in strictness of law, invested with power to make the same; for remedy whereof, *Be it enacted,* That all such sales, deeds, and leases *bona fide* made and executed by the said trustees before the passing of this act, shall be, and the same are hereby confirmed and declared valid. Provided that nothing herein contained shall be deemed or taken to affect the private claim or title of any proprietor of a lot within the said town. And whereas John Alexander having, in his lifetime, laid off several lots of land adjoining the said town; did, in or about the year one thousand seven hundred and seventy four, convey the same in fee to different persons subject to the payment of annual rents, and with condition that if the feoffees did not within two years thence next following build on each lot, a brick, stone, or framed house twenty feet square, with a brick or stone chimney; in that case, or in default of the payment of the rents, it should be lawful for the said John Alexander, his heirs or assigns, to re-enter and hold his of their former estate therein. And whereas from the great scarcity and difficulty of procuring materials for building the said houses during the present war with Great Britain, the proprietors of the said lots have not been able to build thereon within the time limited for that purpose in their deeds of conveyance; and the said John Alexander having in the meantime departed this life, leaving an infant son, to whom his interest in the said lots descends, and no agreement or compromise can legally be made with such infant; application hath therefore been made to this assembly by the proprietors of the said lots, that they may be allowed a farther time to build upon and save the same; and that the said lots may be added to, and made part of the said town of Alexandria: *Be it therefore enacted,* That the proprietors of the lots so laid off and conveyed by the said John Alexander shall, and they are

hereby allowed the term of two years, from and after the end o
the present war, to build upon and save the same; anythin
67 in their deed or deeds of conveyance to the contrary thereo
notwithstanding; and that the said lots shall be, and the sam
are hereby annexed to, and made part of the said town of Alexandri
So soon as the proprietors of such lots shall have built upon an
saved the same, they shall then be entitled to, and have and enjo
the same rights, privileges, and immunities which the other inha
itants of the said town hold and enjoy.

(10 Hening's Statutes at Large 1779-1781 (October 1779
Ch. XXXI, p. 192.)

(c) *An act to empower the mayor, recorder, aldermen and com
mon council of the town of Alexandria to lay a wharfage tax, an
to extend water and Union-streets.*

I. *Be it enacted by the General Assembly,* That the mayor, r
corder, aldermen and common council of the town of Alexandri
shall, and they are hereby empowered to impose a tax upon all ve
sels making use of the wharf belonging to the said town, (ope
vessels excepted) and to enforce the collection and payment there
by such rules and regulations as they may think best, and to appl
the money arising from the said tax to the use and benefit of the sa
town.

II. *And be it further enacted,* That it shall and may be lawf
for the mayor, recorder, aldermen and common council of the sa
town, and they are hereby required to open and extend water-stre
through the said town from north to south as far as the limits
the said town extend, and also to lay off Union-street from north
south as far as the limits of the said town extend. *Provided alway*
That the proprietors of the ground through which Union-street ma
be extended shall have the liberty of making use of any earth whic
it may be necessary to remove in regulating the said stret.

(11 Hening's Statutes at Large, 1782-1784 (May, 1782), c
XXIV, p. 44.)

(d) *An act for regulating the streets in and adjoining to th
town of Alexandria.*

I. WHEREAS it will tend greatly to the ornament of the town
Alexandria, as well as the convenience and health of the inhabitan
thereof, if the streets of the said town were laid off and extended i
a regular and uniform manner:

II. *Be it therefore enacted by the General Assembly,* That a di
trict round the said town, bounded as followeth, viz: Beginning
Great Hunting creek, and running thence parallel with Fairfa
street, to Four-Mile run or creek, so as to intersect King-street (whe
extended) one mile west from the court-house; thence eastward
down the said creek or run to its confluence with Potowmack rive
thence southwardly down the said river, to the mouth of Gre

Hunting creek, thence westwardly up the said creek to the beginning, shall be subject to the regulations herein after mentioned, whensoever the proprietors of land within the aforesaid dis-
68 trict shall, respectively, incline to lay out the same in town lots for the purpose of building thereupon, that is to say, the streets within the original plan of the said town, and which run westwardly from the river, and also the streets laid off by John Alexander and his executors, parallel therewith, shall be extended to the line which makes the western boundary, and be of the same width in every part, except Franklin-street, which shall be only fifty feet wide in that part thereof lying eastward of Union street. The streets hereafter to be laid off on the south side of Franklin-street, and the north side of Oronoko-street, and running westwardly within the said limits, shall be parallel with the last-mentioned street, be of the width of sixty-six feet in every part, and extend from the river Potowmack to the aforesaid western boundary. The streets within the original plan of the town, and which run up and down the river, shall be severally extended of the same width southwardly to Potowmack river or Great-Hunting creek, as the case may be, and northwardly, to Potowmack river or Four-Mile run, as the case may require. All the streets hereafter to be laid off on the west-side of Washington-street, shall be parallel with Fairfax-street, and not less than sixty-six feet wide in every part, nor more than sixty-six feet wide in any part, without the consent of the proprietors of the land, first had and obtained, and shall be extended southwardly to Great-Hunting creek, and northwardly to Potowmack river or Four-Mile run. The streets running westwardly from Potowmack river shall be at the distance of three hundred and fifty-three feet two inches, and the streets running parallel with Fairfax-street, shall be distance from each other two hundred and forty-six feet ten inches, so that each square to be built upon and improved, shall contain two acres of land. The street called Washington street shall be one hundred feet wide in every part, and be extended northwardly and southwardly to the limits of the aforesaid district, except that part of the said street already laid out sixty-six feet wide, which shall continue of that width, unless the mayor and commonalty of the said town choose to widen the same to one hundred feet, in which case they shall, on or before the first day of April next, cause the damages or injury which any person or persons may in any manner sustain in their property by the widening of the said street, to be ascertained and valued by a jury of twelve good and lawful men, upon oath, to be empanelled by the sheriff of Fairfax county, and the amount of such damages, or injury, assessed as aforesaid, to be levied on the property within the limits of the corporation, and shall pay the amount to the several persons entitled thereto, in the following manner, viz: One half on or before the first day of January, one thousand seven hundred and eighty-seven, and the remainder on or before the first day of January, one thousand seven hundred and eighty-eight. *Provided*, That the church and burying ground vested in the minister and vestry of the Protestant Episcopal Church in Fair-

fax parish, shall not in any manner be affected by the extension of Cameron-street.

(12 Hening's Statutes at Large, 1785-1788 (October, 1785), Ch. XCI, p. 205.)

69 (*e*) An Act extending the jurisdiction of the mayor and commonalty of the town of Alexandria, and for other purposes.

(Passed January 8, 1798.)

Whereas by an act of assembly, passed in the year one thousand seven hundred and ninety-six, intituled, "*An act adding to the town of Alexandria, certain lots contiguous thereto, and for other purposes therein mentioned,*" it is enacted, "that certain improved lots, and all others as they become so improved, within the bounds in the said act mentioned, be added to and made part of the said town of Alexandria," thereby leaving out of the jurisdiction of the mayor and commonalty of the said town, the unimproved lots within the limits aforesaid, as long as they shall so remain unimproved; by which means the prosperity of the said town is in a great degree prevented:

1. *Be it therefore enacted*, That the unimproved lots within the limits aforesaid, shall be, and are hereby incorporated with, and considered as a part of the said town of Alexandria, and subject to the same regulations as the other parts thereof.

2. The mayor and commonalty of the said town, are hereby authorized and empowered, whenever they may deem it proper, to open, extend, regulate, pave and improve the streets of the said town: *Provided however*, That they shall make to every person or persons injured by the extension of any of the said streets, such compensation out of the funds of the corporation, as to the said mayor and commonalty shall appear to be just.

3. And whereas the inhabitants of the said town sustain considerable inconveniences, and the interest and prosperity thereof are much impeded, in consequence of the erection of a rope walk by a certain Charles Alexander, and now leased to Joseph Harper and Samuel G. Harper, extending across sundry streets of the said town: *Be it therefore enacted*, That it shall and may be lawful for the court of Fairfax county, and it is hereby empowered and required, on application of the said mayor and commonalty, to direct its clerk to issue a writ in the nature of a writ of *ad quod damnum*, to be directed to the sheriff of that county, commanding him to summon and impannel twelve fit persons, being freeholders, residing within his county and without the limits of the said town, to meet upon the land at or near the said rope walk, on a certain day to be named by the court, and inserted in the said writ, of which reasonable notice shall be given by the sheriff, to the said Joseph Harper and Samuel Harper.

4. The said freeholders on appearing, shall be charged by the said sheriff, on their oaths, impartially and to the best of their judgment, to view the premises, and to say to what damage it will be to the pro-

prietor or tenants thereof, to remove the said rope walk and its appurtenances.

5. The inquest so made and sealed by the said jurors, together with the writ, shall be returned by the said sheriff to the succeeding court, and a copy thereof transmitted by the clerk to the mayor and commonalty of the said town, who shall thereupon order the damages found by the jury to be paid to the party or parties entitled to the same, and after payment or a tender thereof, it shall be lawful for the said mayor and commonalty to remove the said rope walk, and all other obstructions occasioned by the erection thereof.

6. *And be it further enacted*, That the jurisdiction of the mayor and commonalty of the said town, shall extend to all vessels lying at any wharf, projecting from the said town, and also to all vessels made fast to others lying at the wharves, or in docks, or waters within the wharves.

7. This act shall commence and be in force from and after the passing thereof.

(2 Shepherd, Statutes at Large (N. S.), 1796-1802, (December, 1797) Ch. 60, p. 122.)

(*f*) An ACT to amend and re-enact the 2d section of the act passed April 2, 1858, entitled an act to amend the Charter of the City of Alexandria.
Passed February 24, 1860.

Be it enacted by the general assembly, that the second section of the act passed April the second, eighteen hundred and fifty-eight, to amend the charter of the city of Alexandria, be re-enacted and amended so as to read as follows:

"Section 2. Be it further enacted, that the first section of the act to amend the twenty-second and fifth sections of the act entitled an act to amend the charter of the city of Alexandria, passed February the eighteenth, eighteen hundred and fifty-three, be and the same is hereby amended and re-enacted so as to read as follows:

"The limits of the city of Alexandria shall be as follows: Beginning on the Potomac river, at a point distant northerly in the direction of Fairfax street, five hundred and ninety-five feet nine inches from the north line of Montgomery street, as now established in said city, and extended into said river, and running thence westerly and parallel with said north line, to a point at which this course will intersect a line one hundred and twenty-three feet five inches west of, and running parallel to the western line of West street as now established, when extended; thence southerly, parallel with West street, to the north line of Cameron street, as now established; thence westerly, in the direction of the north line of Cameron street extended, to a point in a line with the west line of the lot of the late Francis Peyton, on which he resided; thence southerly, parallel with West street, to the south line of King street extended; thence in a straight

line to a point in the line dividing the counties of Fairfax and Alexandria from each other, ten feet west of Hoof's run; thence southeasterly, along said line, into the Potomac river; then up said river to the beginning."

(Acts of Assembly (Va.), 1859-1860, Chap. 197, p. 350.)

(*g*) An Act to amend the Charter of Alexandria.
Passed January 27, 1865.

Section 1. *Be it enacted by the General Assembly*, That the boundaries of the city of Alexandria shall be as follows: Beginning in the Potomac river at a point distant northwardly, in the direction
71 of Fairfax street, five hundred and ninety-five feet nine inches north of the north line of Montgomery street, produced into said river, and running west, parallel with Montgomery street, to intersect a line drawn north, parallel with West street, and at the distance of one hundred and twenty-three feet five inches west thereof; then south, parallel with West street, to the north line of Cameron street; thence west, parallel with King street, to a point in a line with the west line of the lot formerly the residence of Francis Peyton; then southerly parallel with West street, to the south line of King street extended; then in a straight line to a point in the dividing line of Fairfax and Alexandria counties, ten feet west of Hooff's Run; then southeast, with the said dividing line into the Potomac river; then up said river to the beginning. The laws passed by said City Council in relation to the police and health of said city, for the purposes of drainage and the removal of nuisances from the same, and all process issued under such laws, shall have like force and effect as within the limits aforesaid over the territory lying between said limits and Poor House lane on the north, ten feet west of Hooff's, or Mushpot Run on the west, and Hunting Creek on the south.

(Acts of the General Assembly of Virginia (1865), Chap. IX, p. 10.)

(*h*) An Act to Amend the Charter of the City of Alexandria.
Approved February 20, 1871.

1. Be it enacted by the general assembly of Virginia, That the limits of the city of Alexandria shall be as follows: beginning on the Potomac river at a point distant northerly in the direction of Fairfax street, five hundred and ninety-five feet nine inches from the north line of Montgomery street, as now established in said city, and extending into said river, and running thence westerly and parallel with said north line to a point at which this course will intersect a line one hundred and twenty-three feet five inches west of, and running parallel to the western line of West street, as now established, when extended; thence southerly, parallel with West street, to the north line of Cameron street, as now established; thence westerly in the direction of the north line of Cameron street, extending to a point in a line with the west line of the lot of the late Francis Peyton, on which he resided; thence southerly, parallel with West

street, to the south line of King street, extended thence in a straight line to a point in the line dividing the counties of Fairfax and Alexandria from each other, ten feet west of Hooff's run; thence southerly with said line into the Potomac river; thence up the said river to the beginning.

(Acts of Assembly (Virginia), 1870-1871, Chap. 73, p. 124.)

(i) An Act concerning the Alexandria canal company.
(Passed April 1, 1848.)

1. *Be it enacted by the general assembly of Virginia,* That the Alexandria canal company shall be and they are hereby
72 authorized and empowered to construct such wharves, piers basins and other works on the Potomac river, at or near their present outlet locks, as they may deem necessary and proper for the accommodation of the trade of their canal, and to construct a branch of their canal to such point in the town of Alexandria as may appear to said company most eligible, with the basins and other works necessary and convenient therefor; and also from time to time to enlarge their present basins and pools, and construct other basins, pools and works as may be found necessary and proper for the business of said canal.

2. That the said company be and they are hereby confirmed in the full use and enjoyment of the right and title to, all real property hitherto conveyed to or acquired by them, for the same interests and estates as were so conveyed or acquired; and that the lands, privileges and other things now held by George H. Smoot for said company, at and near the Georgetown ferry, may be conveyed to them, and shall thereupon be held, enjoyed and exercised by them as fully as they are now held, enjoyed and exercised by the said Smoot for their use and benefit.

3. That the said company be and they are hereby authorized and empowered to take loans of money for the construction of any of the works aforesaid, and to make contracts for securing the repayment thereof with interest, by pledges of their tolls and other revenues, or parts thereof, and also to make such other contracts and agreements as they may deem necessary and proper for the interest of their trade and business in connexion with their canal.

4. That the said company shall be and is hereby authorized and empowered to contract and agree for the purchase of all lands through or upon which it may be necessary in their opinion to construct any of the works mentioned in the first section of this act; and also all land necessary and convenient for coal depots not exceeding five acres.

5. This act shall be in force from its passage.

(Acts of Assembly (Va.), 1847-1848. Chap. 124, p. 167.)

j. That portion of Virginia territory which was ceded to the United States to form a part of the District of Columbia, now known as Alexandria City and County, was at the time of such cession a part of Fairfax County, and upon the re-cession of said territory by the United States to Virginia it became, and has ever since continued, an independent County of Virginia known as Alexandria County in which the City of Alexandria is situated, and that the dividing line between Alexandria City and County and Fairfax County from the date of said re-cession until the month of March, 1915, has been the southwestern line of the District of Columbia as said District was bounded prior to the re-cession to Virginia. In March, 1915, the Supreme Court of Appeals of Virginia by a decision then rendered extended the southern limits of the City of Alexandria to the center of Hunting Creek. Before the cession of said territory by Virginia to the United States, and since said recession by the United States to the State of Virginia, said State and the City and County of Alexandria have claimed territorial juris-
73 diction to low-water mark from headland to headland on the Virginia side of the Potomac River opposite the District of Columbia.

(*k*) That all the filled-in area herein referred to, including the land described in the declaration (except a small corner or portion in the vicinity of Jones's Point), lies between a line drawn from Jones's Point at low-water mark to Point Lumley at the foot of Duke Street at low-water mark and the Virginia shore of the Potomac at high-water mark.

l. Copy of survey and plat or chart made by Joseph Berry, Surveyor of Prince William County, in the first and second weeks in April, 1741, of Howsing's patent, which is recorded in Land Suits Liber 1, pages 210-211 of the Complete records of Alexandria County, Virginia, to wit:

Surveyed for Messrs. John and Girard Alexander and others 6000 acres of land in Prince William County on the freshes of Potomac River, beginning at A, an old red oak standing at the mouth of a small branch near opposite to an island formerly called My Lord's Island, and running down the several courses of Potomac River, crossing several creeks to a marked hickory at B, the southeasternmost point of Great Hunting Creek; thence up the several courses of Hunting Creek to C the root of an old hickory, being an ancient corner of said tract; thence north 6° West 1776 poles to D; thence East 410 poles to the beginning; the dotted line C. E. is North and South mentioned in the patent, but does not give the quantity by 933 acres; the dotted line C. F. is north 15° West, which is according to an ancient survey of William Blans and gives the last course East 720 poles to the beginning, according to the patent. All the several divisions are described by black lines and every person claiming within his own plat. Surveyed and divided between the parties as described in the plat in part of the first and second weeks in April, 1741.

JOSEPH BERRY.

m. Copy of plat or chart referred to and recorded with the above mentioned survey (No. 16).

VI.

The plaintiff, insisting that items "*s*" to "*y*" inclusive, in Section IV of this Stipulation, offered by the defendant, having reference to a different subject-matter, are irrelevant and immaterial to the issue in this cause, nevertheless, for the purpose solely of rebutting the same, if they be admitted, offers the following:

a. From the Report to the Governor of Virginia by Henry A. Wise, by order of the Commissioners on the Part of Virginia, dated December 18, 1872, the following:

74 "*Report.*

RICHMOND, VIRGINIA, December 18th, 1872.

To His Excellency,
GILBERT C. WALKER,
Governor of the State of Virginia.

SIR: I am instructed by my colleagues on the boundary commission between the states of Virginia and Maryland, to report to you their proceedings since their last report, and to submit a statement on the part of each state, setting forth their respective claims of boundary.

Maryland claims to the South bank of the Potomac, to Smith's point; thence to Cedar straits, on the E. shore of the Chesapeake bay; thence up the Pocomoke river to where what is called the Calvert and Scarbrough line crosses that river; thence by said line to the Atlantic ocean.

Virginia claims to the North bank of the Potomac, to the extreme southern angle of Point Lookout; thence by a right line to the extremest part of the westermost angle of Watkins point, at the North headland of Little Annamessex river; and thence by the Calvert and Scarbrough line to the Atlantic ocean, according to the line run in 1668 by the commissioners on the part of the two colonies, fully and finally confirmed by both Lord Baltimore and the royal province of Virginia."

Report and Accompanying Documents of the Virginia Commissioners appointed to ascertain the Boundary Line between Maryland and Virginia. Richmond: R. F. Walker, Sup't Public Printing, 1873, page 3.

b. From "Statement on the Part of the Commissioners of Virginia, submitted at Richmond, November 7, 1872, before the Joint Commission of the States of Maryland and Virginia, being appendix "B" of the foregoing report:

"* * * It is unnecessary, and would be but supererogatory to recapitulate the evidences of right to the whole river of Potomac.

Virginia claims the river Potomac to the left or North bank on the Western shore, and to Scarbrough and Calvert line on the Eastern shore of the Chesapeake, from Point Lookout to the extremest part of the Westernmost angle of Watkins point, the promontory formed by the North headland of Little Annamessex river or creek, on the Eastern side of Tangier sound, which headland, or promontory, is the initial and terminating point of survey between the two States of Maryland and Virginia, ascertained, agreed and fixed as described A. D. 1668, by and under their joint and several proper authorities, and by them approved and adopted.

HENRY A. WISE,
D. C. DEJARNETTE,
WM. WATTS,
Commissioners on the Part of Virginia."

75 *c.* The "Statement on the Part of the Commissioners of Virginia" aforesaid, being Appendix "B" of the Report aforesaid, speaking of letters patent from Charles II. to Henry, Earl of St. Albans, and others, as successors and assigns of Ralph, Lord Hopton, and others, under the grant to them, bearing date "the 18th day of September, in the first year of our reign" (which said confirmatory grant to Henry, Earl of St. Albans, and others was the foundation of the grant subsequently made to his successor, Thomas, Lord Culpeper, in September, 1688), contains the following passage:

"This grant" [i. e., the grant to Henry, Earl of St. Albans and others] "was made by writt of privy seal, at Westminster, the 8th day of May, the one and twentieth year of the reign of Charles II., counting from the death of Charles I. would be 1668–69. Also see No. 94 of the De Jarnette papers, dated 'At Whitehall,' November 19th, 1675.

'Present—The king's most excellent majestie in councill.'

The lords of the committee on foreign plantations presented to his majesty in council a report touching a grant to be past unto his majesty's subject of Virginia. The petition of Francis Morryson and others, agents for the governor, council and burgesses of the country of Virginia and territory of Accomac.

The report of the committee approved the petition, and it was confirmed by the king in council, November 19th, 1675, authorizing the governor, council and commonalty of Virginia to purchase the lands, etc., contained in grant to the Earl of St. Albans, etc., etc.

Under these and various other papers, and laws passed to that end, the colony of Virginia became possessed of the entire territory between the Rappahannock and Potomac rivers, embracing all the islands and waters of said rivers, and has ever since exercised jurisdiction over the same.

Not only by successful revolution and sovereign power *de jure et de facto,* was Virginia, by the treaty-making power itself, restored to her ancient limits, but her boundary and jurisdiction on the Potomac river was fixed by royal grant as well as by the articles of surrender to the commonwealth.

Lord Fairfax fixed the initial mark of boundary at the head spring of the North branch of the Potomac under his title, and prevailed against the lord proprietor of Baltimore, who claimed not only the whole of the Northern Neck of Virginia, but to the South bank of Acquia creek. See the map of his own 'achievement,' with his coat of arms, in Ogleby's History. And Lord Fairfax, under Virginia laws, always claimed the Potomac river and its islands, and Virginia always exercised jurisdiction in various ways over them, as will be hereafter shown. See the surveys of Lord Fairfax, hereto appended.

Indeed, it was always a matter of dispute whether the original grant to Lord Baltimore could reach as far West as the head spring of either branch of the present Potomac. The river to which the name of Potomac was given was the Quiriough. That river, at the date of the grant to Lord Baltimore in 1633, was not known
76 higher up than its falls; and the country West of the Blue Ridge was not explored, certainly not settled, for a century after that date. See Kercheval's History of the Valley of Virginia. The North branch of the Quiriough was the Cohongaroota, and the South branch was called the Wapopocomo. If the name Potomac in the Baltimore grant meant the Quiriough, as undoubtedly it did (see the alias named in the grant to Lord Hopton), then the line of Maryland running by the line of 40° N. L. until it came to the meridian of the most Western head spring of the Quiriough would have to stop far East of the Meridian of the head spring of the Cohongaroota. But Lord Fairfax and Lord Baltimore fixed the boundary by the Fairfax stone, as found by Michler. And Michler's report showed a curious result of survey in demonstrating, perhaps, what the words 'ulteriorem fluminis ripam,' in Baltimore's grant, meant. Michler, in making his survey, could not of course begin to run a line South from the parallel of 40° N. L. until he first found the head spring, the meridian of which he was to run. He searched for and found the spring and stone marked by the Fairfax initials, and then run its meridianal line North until he crossed or came to the parallel of 40° N. L. In doing so he found that within four or five thousand yards North of the stone and spring his meridian line struck the Potomac river, there running Northwest. Instead of running South from the parallel of 40° to the spring, he was running North from the spring to the parallel—exactly the reverse of the course required by the grant. The grantor, as it were, standing on the parallel of 40°, gave a line inclining South from the meridian of the spring to the ulterior bank of the river from his stand-point on the parallel. The river running there Northwest and then deflecting West and South until it takes its general course Southeast, the ulterior bank of the river was, geographically, the left bank thereof. The line thus mathematically was fixed on the North side of the Potomac."

Report and Accompanying Documents of the Virginia Commissioners appointed to ascertain the Boundary Line between Maryland and Virginia. Richmond: R. F. Walker, Sup't Public Printing, 1873, pages 86–88.

d. There is no evidence, physical or historical, that any creek or stream ever entered the Potomac River between Jones's Point and Point Lumley. Although land has been filled in, at or near the shipyard at the foot of Franklin Street, the evidence of the topography of the land and the plats indicate that there has always been in existence a point of land there, intermediate between Jones's Point and Lumley Point.

e. The Resolution of the Maryland Assembly of 1795, appointing a boundary commission:

RESOLVED, That William Pinkney, William Cooke and Philip Barton Key, Esquires, be and they are hereby appointed commissioners on the part of this state to meet such commissioners as may be appointed for the same purpose by the commonwealth of Virginia, to settle and adjust, by mutual compact between the
77 two governments, the western and southern limits of this state, and the dividing lines and boundaries between this state and the said commonwealth; and also to settle and adjust as aforesaid any claim of this state or the said commonwealth to territory within the limits of the other; and the said commissioners are required to report their proceedings, in virtue of this appointment and authority, to the general assembly of this state, at their next session after the same shall have been concluded, for confirmation or rejection."

Acts of Maryland, Sess., 1795.

f. "Report and Resolution in relation to the Southern and Western Boundaries of this State."

"The southern and western boundaries of Maryland have never been adjusted and defined by compact with Virginia."

Laws, Md., 1834, Res. No. 99.

g. "AN ACT to appoint a Commission of three persons to meet a like number of persons appointed by the State of Virginia to settle and adjust the boundary line on the Eastern Shore of the Chesapeake Bay, between the States of Virginia and Maryland.

Section 1. *Be it enacted by the General Assembly of Maryland,* That Isaac D. Jones, William J. Aydelott and Levin S. Waters, be and they are hereby appointed Commissioners on the part of the State of Maryland to meet a like number of persons appointed or to be appointed by the State of Virginia, to settle and adjust the boundary line on the Eastern Shore of the Chesapeake Bay, between the States of Virginia and Maryland, their work to be reported to the General Assembly at its next session for approval or rejection.

Sec. 2. *And be it enacted,* That each of said Commissioners shall receive for said services five dollars per day for the time occupied in the discharge of said duty, and his necessary expenses.

Sec. 3. *And be it enacted,* That this Act shall take effect from the date of its passage.

Approved March 30, 1868."

Laws of Maryland, 1868, c. 370, p. 691.

h. "AN ACT in Relation to the Boundary Lines Between the State of Virginia and the States of Maryland, North Carolina, and Tennessee.

Approved February 4, 1871.

1. Be it enacted by the general assembly, That the governor of this commonwealth apply to the proper officer of the United States government for the assignment of a competent corps of surveyors to the duty of ascertaining and locating the true boundary lines between the state of Virginia and the states of Maryland, North Carolina, and Tennessee.

2. The governor is hereby authorized to appoint three commissioners on behalf of this state to confer and act with such corps of surveyors, and with similar commissioners on behalf of the other states herein named, if such commissioners shall be appointed by said states.

3. The governor shall transmit copies of this act to the governors of Maryland, North Carolina, and Tennessee, and invite the said governors to appoint commissioners on behalf of their respective states to confer and act with the commissioners appointed on behalf of this state.

4. The commissioners of this state shall submit to the general assembly, as soon as practicable after the completion of their labors, a report of their acts and conclusions in regard to the said boundary lines.

5. (This section makes appropriations for expenses. Omitted as immaterial.)

6. The joint resolutions approved June twenty-seventh, eighteen hundred and seventy, entitled joint resolutions in relation to appointment of commissioners to ascertain and define the boundary lines between Virginia and Maryland, North Carolina and Tennessee, are hereby rescinded.

7. This act shall be in force from its passage."

Virginia Acts of Assembly, 1870-1871, c. 65, p. 62-63.

i. AN ACT to settle and adjust the boundary line between the States of Virginia and Maryland.

WHEREAS, The commissioners appointed by the Act of the General Assembly of this State, at the January session, eighteen hundred and sixty-eight, chapter three hundred and seventy, have reported to this General Assembly that they met a similar number of commis-

sioners, appointed by the State of Virginia, at Washington city, on the first day of February, eighteen hundred and seventy-two, when it was ascertained that the Virginia commissioners were empowered to settle and adjust the boundary line between the two States, and the commissioners of this State were empowered to settle and adjust the boundary line only upon the Eastern Shore of the Chesapeake Bay, and that by reason of such dissimilar powers, no further proceedings could then be had; and

WHEREAS, This State is desirous of a speedy and amicable settlement and adjustment of all questions of boundary between the two States which the State of Virginia may desire to raise; therefore

Section 1. *Be it enacted by the General Assembly of Maryland*, That the said commissioners, to wit: Isaac D. Jones, Levin L. Waters, and William J. Aydelott, be and they are hereby continued commissioners on the part of this State, and they are hereby authorized and empowered to meet the commissioners who are appointed or may be appointed by the State of Virginia, and by compact, to settle and adjust the boundary line between the two States, and in the event of agreement, the compact of boundary to be reported to the General Assembly of each of said States for confirmation or rejection; and upon the ratification of such compact of boundary by the General Assembly of said States respectively, the boundary line therein described, shall be fixed and established to remain forever,
79 unless changed by the mutual consent of the said States of Virginia and Maryland.

(Sec. 2 makes appropriations for expenses and is omitted as immaterial.)

Sec. 3. *And be it enacted*, That all Acts and parts of Acts inconsistent with this Act, be and they are hereby repealed; and this Act shall take effect from the date of its passage and approval.

Approved April 1, 1872."

Laws of Maryland, 1872, c. 210, pp. 311-312.

VII.

On behalf of the defendant, The Marine Railway & Coal Company, Incorporated, the following is offered in evidence:

(1) That until within the last five years there was maintained almost continuously for over fifty years at least a ferry line between the City of Washington, District of Columbia, and the City of Alexandria, Virginia, upon the boats of which were located bars for the sale of intoxicating liquors under licenses granted by the United States Government; that the ferry steamers when coming within the line of the corporate limits of Alexandria and touching at the wharf in Alexandria city, not having obtained a license from the State of Virginia and the City of Alexandria to sell intoxicating liquors at the bar of said steamers, were under the police regulations of both State and City required to close the bar and prohibited from selling

intoxicating liquors whilst the steamer was lying at the ferry slip in the City of Alexandria, and until it had left and gotten beyond the corporate limits of the City of Alexandria.

(2) That the sewerage of that part of the city lying east of Alfred Street in said City has always been emptied into the Potomac River, and is now being emptied into the Potomac River, and has been done and is now being done without objection or protest by the authorities of the District of Columbia.

(3) That the Gas Works of the City of Alexandria are located only a block from the river front, and that all the drainage and refuse matter from said gas works for a period of over fifty years has been continuously emptied into the Potomac River, without any protest or objection being made by the District authorities to the authorities of the City of Alexandria.

(4) That the fertilizer and acid plant of the Alexandria Fertilizer & Chemical works is located upon the River at Point West; that all the drainage and refuse matter from said plant is emptied into the Potomac River, and that there has been no protest or objection made to said corporation as to its conduct in that direction, and that the same is true of the Alexandria Ice plant, which is situated on the river front at the foot of Queen Street.

(5) That the police authorities of Alexandria have been called upon by the Police authorities of Washington time and again to make arrests of fugitives from justice in the District of Columbia who had left the District upon boats running between Wash-80 ington and Alexandria, and upon boats running from Washington to other points on the Potomac River touching at Alexandria when said boats came within the corporate limits of the city of Alexandria; notably the case of Harry Randall, who had an altercation in the city of Washington, D. C., and came to Alexandria upon one of the steamers touching at the wharves of Alexandria, was arrested by the police of the city of Alexandria, and taken from the boat after it came within the lines of the corporate limits of the city, and turned over to the police authorities of the city of Washington.

(6) That on a number of occasions both the State of Virginia and the City authorities of Alexandria have required parties owning arks and who had located the same within what is known as Battery Cove, and hereinbefore mentioned, because it was developed that gambling enterprises were being conducted there, and the State and City authorities have also within the said Cove made arrests of persons who made a practice of getting upon small boats to be carried out to gambling arks lying within the waters of the State of Maryland.

VIII.

On behalf of the United States, the following is offered in evidence:

1. On May 24, 1901, William O'Brien, a resident of Virginia, was arrested by Officer Cornwell of the District of Columbia Police force, on a warrant charging him with fishing in the Potomac River in violation of Section 896, Code of the District of Columbia. The offence consisted in fishing in the Potomac River with a dip net from "The Warehouse," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 60 yards above Chain Bridge. Upon prosecution in the Police Court of the District of Columbia, O'Brien was convicted and fined $10.

2. On June 10, 1902, Charles Fletcher was arrested by Officer Cornwell on a warrant charging him with fishing in the Potomac River in violation of said section. The offence consisted in fishing in the Potomac River with a dip net from "Shelving Rock," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 60 yards southerly of the N. E. and S. W. boundary line of the District. Upon prosecution in the Police Court of the District of Columbia, Fletcher was convicted and fined $10.

3. On June 16, 1904, William Brown, a resident of the District of Columbia, was arrested by Officer Preston on a warrant charging him with fishing in the Potomac River in violation of said section. The offence consisted in fishing in the Potomac River with a dip net from "Flat Stone," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 180 yards southerly of the N. E. and S. W. District line. Upon prosecution in the Police Court of the District of Columbia, Brown was convicted and fined $20.

4. On June 16, 1904, Charles Burrows, a resident of the District of Columbia, was arrested by Officer Cornwell on a warrant charging him with fishing in the Potomac River in violation of said section.
The offence consisted in fishing in the Potomac River with a
81 dip net from "Flat Stone," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 180 yards southerly of the N. E. and S. W. District line. Upon prosecution in the Police Court of the District of Columbia, Burrows was convicted and fined $20.

5. On June 16, 1904, Charles Schaffer, a resident of the District of Columbia, was arrested by Officer Preston on a warrant charging him with fishing in the Potomac River in violation of said section. The offence consisted in fishing in the Potomac River with a dip net from "Flat Stone," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 180 yards southerly of the N. E. and S. W. District line. Upon prosecution in the Police Court of the District of Columbia, Schaffer was convicted and fined $20.

6. On May 2, 1905, Arthur Hazelock, a resident of the District of Columbia, was arrested by Officer Preston for fishing in the Potomac River in violation of said section. The offence consisted in fishing in the Potomac River with a dip net from "Boiling Rock," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 150 yards above Chain Bridge. Upon prosecution in the Police Court of the District of Columbia, Hazelock was convicted and fined $20.

7. On January 22, 1906, August L. Grimes, a resident of the District of Columbia, was arrested on the Virginia shore by Officers Grove and Lipscomb for fishing in the Potomac River in violation of said section. The offence consisted in hauling a seine in a cove in what is known as Little River, back of Analostan Island, shoreward of a line drawn between the points forming the cove at low-water mark. Upon prosecution in the Police Court of the District of Columbia, Grimes was convicted and fined $30.

8. On May 7, 1907, Thomas Hughes, a resident of the District of Columbia, was arrested by Officer Cornwell on a warrant charging him with fishing in the Potomac River in violation of said section. The offence consisted in fishing in the Potomac River with a dip net from "The Overseer," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 150 yards southerly of the N. E. and S. W. boundary of the District. Upon prosecution in the Police Court of the District of Columbia, Hughes was convicted and fined $10.

9. On May 7, 1907, Thomas Schaffer, a resident of the District of Columbia, was arrested by Officer Steinbraker on a warrant charging him with fishing in the Potomac River in violation of said section. The offence consisted in fishing in the Potomac River with a dip net from "The Overseer," a rock forming a part of the fast land of the Virginia shore above high-water mark and located about 150 yards southerly of the N. E. and S. W. District line. Upon prosecution in the Police Court of the District of Columbia, Schaffer was convicted and fined $10.

10. On June 1, 1907, Joseph Evans, a resident of Virginia, was arrested by Officer Cornwell on a warrant charging that on May 19, 1907, Evans was fishing in the Potomac River in violation of said section. Evans was prosecuted upon an information in the Police Court of the District of Columbia and upon the trial of this information, it appeared that Evans, at the time of the commission of the offence charged, was standing on a rock on the Virginia shore, opposite the District of Columbia. The rock was above the highwater mark of the Potomac River, and Evans was fishing with a dip net in the river, dipping the net into the river below high-water mark. Said defendant was adjudged guilty of a violation of said section, which said judgment was affirmed upon writ of error by the Court of Appeals of the District of Columbia, in the cause of

Joseph Evans v. United States, No. 1799, reported in 31 App. (D. C.), p. 544.

11. On June 19, 1907, William Gamble, a resident of Virginia, was arrested by Officer Steinbraker on a warrant charging him with fishing in the Potomac River in violation of said section. The offence consisted in fishing in the Potomac River with a dip net from "The Overseer," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 150 yards southerly of the N. E. and S. W. boundary of the District. Upon prosecution in the Police Court of the District of Columbia, Gamble was convicted and fined $10.

12. On September 15, 1911, a warrant was issued from the Police Court of the District of Columbia for Harold Miller, a resident of Virginia, manager of the Rosslyn Electric & Gas Co., a plant of which said company is located in Rosslyn, Virginia, charging the said Miller with having violated the provisions of Sec. 901 of the Code of Law for the District of Columbia, in allowing tar, oil, ammoniacal liquor, or other waste products within the gas works to flow into the Potomac River. When called for trial, a *nolle prosequi* was entered by the Assistant United States Attorney, prosecuting for the United States in said Police Court, upon agreement with said Miller that he would discontinue the practice, on account of which the warrant was sued out.

13. On May 29, 1912 Alvird Queen, a resident of the District of Columbia, was indicted by the Grand Jury in and for the District of Columbia for violation of Section 896, Code of the District of Columbia. The offence consisted in fishing in the Potomac River with a dip net from "The Overseer," a rock forming part of the fast land of the Virginia shore above high-water mark and located about 150 yards below the N. E. and S. W. District line. Queen was arrested in the State of Virginia by a United States Marshal, was conveyed to Alexandria, Virginia, where he was given a hearing before a United States Commissioner and was held for trial in the Criminal Term of the Supreme Court of the District of Columbia. Upon trial in said Court, he was convicted and fined $50.

14. On October 9, 1912, Homer Wells, a resident of the District of Columbia, was arrested in a house boat tied to the Virginia shore above low-water mark, adjacent to the waters known as Little River, upon the charge of having, in violation of said section, kept, set up or promoted, and sold chances in, a policy lottery, or policy shop, within the District of Columbia. Upon indictment charging these offenses, found by the Grand Jury in and for the District
83 of Columbia, said Wells was tried and convicted in a Criminal Term of the Supreme Court of the District of Columbia, on November 1, 1912, and sentenced to imprisonment for two years in the penitentiary.

15. On October 17, 1914, George Hilbus, a resident of the District of Columbia, was arraigned before J. Gordon Finney, Esq., a justice of the peace of the County of Alexandria, State of Virginia,

on a complaint of violating the laws of the State of Virginia relating to the sale of intoxicating liquor. The offence consisted in the sale of whiskey on a house boat owned and occupied by Hilbus and lying between high and low-water mark on the Virginia shore about 600 feet above the Highway Bridge. Upon the trial of said complaint, the aforesaid justice discharged said Hilbus upon the ground that the liquor was not sold in the State of Virginia but in the District of Columbia. Thereupon said Hilbus was arrested upon a warrant issued by the Police Court of the District of Columbia charging him with having sold whiskey without a license within the District of Columbia. Hilbus was confined in Police Station No. 1 in the District of Columbia and arraigned in the Police Court of the same, whereupon he demanded a jury trial and gave bond for his appearance.

16. On June 29, 1915, Amos Donaldson, a resident of the State of Virginia, and Harry Burrows, a resident of the District of Columbia, were prosecuted upon information in the Police Court of the District of Columbia on the charge of fishing in the Potomac River in violation of Sec. 896, Code of the District of Columbia. The offence consisted in fishing in the Potomac River with a dip net from the Virginia shore near Chain Bridge. Both were convicted and Donaldson was fined $20 and Burrows, $10.

In each of the aforesaid cases, the persons designated by the title "Officer" were officers of the Metropolitan Police Force of the District of Columbia. Except when otherwise therein stated, the actual arrests of the persons mentioned in the foregoing sixteen paragraphs were made in the City or County of Washington.

17. That at the time when the ferry line was maintained between the City of Washington, District of Columbia, and the City of Alexandria, Virginia, as stated in VII (1), no licenses for the sale of intoxicating liquors on ferry boats or any other boats or steamers in the Potomac River were granted or issued by the District of Columbia. Upon the theory that an Internal Revenue license issued by the United States was the only license necessary for sales of intoxicating liquors made in transit on vessels upon the navigable waters of the United States, the company operating the ferry line opened bars on the ferry boats after they had left the wharves at Washington and Alexandria, respectively. While lying in the ferry slip, in Alexandria, as well as in Washington, such bars were kept closed. Warrants having been issued for Daniel J. Callahan and Cuthbert Ridley, officers of the Company, for violation of the Excise Law of the District of Columbia, it was agreed by the company's counsel that the sale of intoxicating liquors on such boats was unlawful, whereupon a *nolle prosequi* was entered, upon the understanding that the bars would be shut down and the practice discontinued,
84 which was accordingly done.

18. That in 1912, Lewis Jefferson, manager of the "Angler," a steamboat engaged in carying passengers between the City of Washington and an excursion resort in Maryland, about two miles below Alexandria, was prosecuted in the Police Court for selling intoxi-

cating liquors at a bar on said boat after she was backed out from the Seventh Street wharf and while in the channel opposite the sea wall of Potomac Park, and also upon the return trip while in the river between the City of Alexandria and the opposite shore of the District of Columbia. Jefferson had previously applied to the District Excise Board for a retail liquor license which the Board had declined to grant, on the ground that it was without authority under the Excise Law to do so. Jefferson was convicted. His conviction was affirmed in the Court of Appeals, on the ground that the entire part of the Potomac River between the District and Virginia shores is a part of the District of Columbia and, as such, is subject to all local and police regulations, unless the intent appears to exclude it therefrom; that the vessel's being engaged in interstate commerce was of no weight because the power of Congress in the District of Columbia is plenary and extends to all commerce of whatsoever nature which may be carried on within its boundaries; and that it was immaterial whether the Excise Board had been given power to issue a license for a bar on a boat in the river, because the want of a provision for a license in such a place would not justify a sale within the District without license, the Excise law having re-prohibited all sales except as provided therein. *Jefferson v. District of Columbia*, 40 App. 381, 383.

19. That the only waste of any kind or description from the fertilizer and acid plant of the Alexandria Fertilizer & Chemical Works discharged into the Potomac River is the waste water from a wash tower where the pungent gas from the dissolving of phosphate rock is darwn through water which is pumped from the river and returned into it within twenty or thirty feet of the place where it is pumped out, and which water is not found to contain any tar, oil, ammoniacal liquor, or to be in any wise discolored, polluted or to be injurious or deleterious to fish or otherwise, and that the wharf at the point where said plant is located is the most frequented of all wharves in Alexandria City for fishing by hand line.

20. That drainage from the Gas Works of the City of Alexandria discharged into the Potomac River has been found to contain no tar, oil, or ammoniacal liquor, or to be in any wise discolored, polluted, or to be injurious or deleterious to fish or otherwise, all waste products of injurious character, such as tar, being eliminated by a process of filtering before the water is returned into the Potomac.

21. That all cases of arrest made by the police authorities of Alexandria at the request of the police authorities of the District of Columbia, referred to in Section VII (5) herein, were cases in which the fugitive from justice had left Washington on a boat on which there was no officer or agent of the Police of Washington and would have escaped because of inability otherwise to make the arrest; that
85 this practice was one which was reciprocally followed by the Washington Police in favor of the Alexandria police, and that, in the case of Harry Randall, referred to in said Section VII (5), the police authorities of Washington, having learned that a man seeking to avoid assault by said Randall by jumping from one boat moored

at the Washington wharf to another had fallen overboard and been drowned and said Randall had thereupon left the wharf upon a steamer touching at the wharves of Alexandria, telephoned the police of Alexandria to arrest him, upon the landing of said boat at Alexandria, which they accordingly did, and the said Randall was by them immediately delivered over without extradition or removal proceedings, to the officer in charge of the Harbor Police Boat of the District of Columbia, which upon the flight of said Randall had been dispatched to Alexandria for the purpose of bringing him back.

22. That the City of Alexandria does not maintain any boat or vessel for Harbor Police on the Potomac River.

IX.

This stipulation shall not, nor shall anything herein, be construed to preclude either party from offering, at the trial of the issue upon the plea in abatement or upon the trial of any other issue in this cause, any other or further admissible evidence.

Witness our hands this twelfth day of January, 1916.

HENRY H. GLASSIE,
Attorney for the Plaintiff.
JAS. R. CATON,
HAMILTON, YERKES & HAMILTON,
Attorneys for the Defendant.

86 *List of Maps, Plats, and Plans.*

Filed April 21, 1916.

* * * * * *

(P. 2.) A. Blueprint, showing the location and lines of the property in suit, Exhibit "A" to Declaration.

(P. 5.) B. Plat of Battery Cove and vicinity, showing reclaimed area, high and low-water shore lines in 1912, and high-water shore line on Ewing Map of 1845.

(P. 7.) 1. Plan of the Town of Alexandria, laid out in 1749.

(P. 7.) 2. Plat showing the divisions of the lands of John Gill.

(P. 7.) 3. Composite map designed to show Jones's Point, Lumley Point, and Point West in 1748.

(P. 7.) 4. Plat of the Potomac River at Alexandria for River and Harbor Improvements, attached to House Doc. 1253, 60th Cong., 2d Sess.

(P. 7.) 5. Copy of foregoing plat No. 4 with lines added to show location of retaining wall.

(P. 8.) 6. Plat of the route of the Alex. Canal Company, October, 1838.

(P. 8.) 7. Plan of the Town of Alexandria, D. C., with the Environs, Maskell C. Ewing, C. E., 1845.

(P. 8. 8. Coast and Geodetic Survey Chart of Potomac River of 1864.

(P. 99.) 9. Copy of plat, Mar. 31, 1746, to show lines of Howsing patent.

(P. 12.) 11. Plat showing properties in the neighborhood of shipyard.

(P. 11.) 12. Plat showing the relation of Strand Street to Point Lumley.

87 (P. 100.) 13. Copy of plat No. 6 with lines added to show defendant's claim of the extension of the corporate limits of Alexandria.

(P. 100.) 14. Photograph of a map of Alexandria, 1798.

(P. 100.) 15. Photograph of Coast & Geodetic Survey map with lines added to illustrate defendant's claim of the extension of the corporate limits of Alexandria and the location of the retaining wall.

(P. 115.) 16. Copy of plat made by Joseph Berry, 1741, to show lines of Howsing patent.

88 *Stipulation as to Defendant's Supplemental Evidence.*

Filed April 21, 1916.

On behalf of the defendant, the Marine Railway & Coal Company, the following are offered in evidence:

(*a*) An Act of the General Assembly of Virginia of 1748, to establish a town at Hunting Creek warehouse on Potomac River, which reads as follows:

"Whereas it has been represented to this present General Assembly, that a Town at Hunting Creek Warehouse on Potomac River, would be commodious for trade and navigation, and tend greatly to the ease and advantage of the frontier inhabitants. Be it therefore enacted by the Lieutenant Governor, Council, and Burgesses of this present General Assembly, and it is hereby enacted by the authority of the same, that within four months after the passing of this act, sixty acres of land, parcel of the lands of Philip Alexander, John Alexander and Hugh West, situate lying and being on the south side of Potomac River, about the mouth of Great Hunting Creek and in the County of Fairfax, shall be surveyed and laid out by the surveyor of the said County, beginning at the mouth of the first branch above the warehouse, and extend down the meanders of

the said River Potomac to a point called middle point, and thence down the said River ten poles; and from thence by a line parallel to the dividing line, between John Alexander's land and Philip Alexander, and back into the woods for the quantity aforesaid; and the said sixty acres of land so to be surveyed and laid out, shall be, and is hereby vested in the Right Honorable Thomas Lord Fairfax, the Honorable William Fairfax, Esq., George Fairfax, Richard Osborne, Laurence Washington, William Ramsey, John Carlyle, John Pagan, Gerard Alexander and Hugh West, of the said County of Fairfax, gentlemen, and Philip Alexander of the County of Stafford, gentleman, and their successors in trust for the several purposes hereinafter mentioned. And the said Thomas Lord Fairfax, William Fairfax, George Fairfax, Richard Osborne, L. Washington, William Ramsey, John Carlyle, John Pagan, Gerard Alexander, Hugh West, and Philip Alexander are hereby constituted and appointed directors and trustees for designing building, carrying on, and maintaining the said town upon the land aforesaid; and the said trustees and directors or any six of them, shall have power to meet as often as they shall think necessary, and shall lay out the said sixty acres into lots and streets not exceeding half an acre of ground in
89 each lot: and also set apart such portions of the said land for a market place, and public landing as to them shall seem convenient: and when the said town shall be so laid out, the said directors and trustees shall have full power and authority to sell all the said lots, by public sale or auction, from time to time, to the highest bidder so as no person shall have more than two lots, and when any such lots shall be sold, any two of the said trustees shall and may, upon payment of the purchase money, by some sufficient conveyance or conveyances, convey the fee simple estate of such lot or lots to the purchaser or purchasers; and he or they or his or their heirs or assigns, respectively, shall and may forever thereafter peaceably and quietly have, hold, possess and enjoy, free and discharged from all right, title, claim, interest and demand whatsoever of the said Philip Alexander, John Alexander, and Hugh West, and the heirs and assigns of them respectively, and all persons whatsoever claiming by, from, or under them or either of them. Provided nevertheless, That the said trustees and directors, after deducting sufficient to reimburse the charge and expense of surveying and laying out the said lots, shall pay or cause to be paid, to the said Philip Alexander, John Alexander and Hugh West all the money arising by the sale of the said lots according to their respective rights therein.

And be it further enacted, by the authority aforesaid, That the grantee or grantees of every such lot or lots to be sold or conveyed in the said town, shall within two years next after the date of the conveyance for the same, erect, build and finish on each lot so conveyed, one house of brick, stone or wood, well framed of the dimensions of twenty feet square, and nine feet pitch, at the least or proportionably thereto if such grantee shall have two lots contiguous, with a brick or stone chimney; and the said directors shall have full power and authority to establish such rules and orders for the

more regular placing the said houses as to them shall seem meet; and if the owner of any such lot shall fail to pursue and comply with the directions herein prescribed for the building and finishing one or more house or houses thereon, then such lots upon which such houses shall not be so built and finished shall be revested in the said trustees, and shall and may be sold and conveyed to any other person or persons whatsoever, in the manner before directed, and shall revest and be again sold as often as the owner or owners shall fail to perform, obey, and fulfil the directions aforesaid, and the money arising from the sale of such lots as shall be revested and sold as aforesaid shall be, by the said trustees from time to time, applied to such public use for the common benefit of the inhabitants of the said town as to them shall seem most proper; and if the said inhabitants of said town shall fail to obey and pursue the rules and orders of the said directors in repairing and mending the streets, ...ndings, and public wharfs, they shall be liable to the same penalties as are inflicted for not repairing the highways in this colony. And for continuing the succession of the said trustees and directors, until the governor of this colony shall incorporate some other persons by letters patent under the great seal of this Colony to be one body politic and corporate, to whom the government of the said town shall be committed:

Be it further enacted, That in case of the death of the said directors or of their refusal to act, the surviving or other directors or the major part of them, shall assemble and are hereby empowered from time to time by instrument in writing, under their respective hands and seals, to nominate some other person or persons, being an inhabitant or freeholder of the said town, in the place of him so doing or refusing, which new director or directors so nominated and appointed shall from thenceforth have the like power and authority in all things relating to the matters herein contained; as if he or they had been expressly named and appointed in and by this act; and every such instrument and nomination, shall, from time to time, be recorded in books of the said directors.

And be it further enacted, by the authority aforesaid, That the said town shall be called by the name of Alexandria.

(*b*) An Act of the General Assembly of Virginia of November, 1753, to dock the entail of certain lands whereof Gerard Alexander is seized, and for settling other lands and slaves of greater value to the same uses, which reads as follows:

"I. Whereas Robert Alexander, of the county of Stafford, deceased, was in his lifetime, and at the time of his death, seized in fee-simple, of, and in one certain tract or parcel of land, containing by estimation six thousand acres, with the appurtenances, lying and being in the parish of Truro, then in the county of Prince William, but now in the county of Fairfax; and being so seised, did make his last will and testament in writing, bearing date the twenty eighth day of April, in the year of our Lord one thousand seven hundred and thirty five, and thereby, among other things, did give and devise unto his son Gerard Alexander the Island in Prince William

ounty, whereon the said Gerard at that time lived, called Holm's sland; also eleven hundred and twenty five acres of land joining to he said island, being part of the aforesaid tract of six thousand eres, and devised the remainder of the said tract, and the residue f his whole estate, which consisted of negroes, &c. to be equally ivided between his two sons, John and Gerard Alexander, and heir heirs forever; and by a subsequent clause in the said will, the aid Robert Alexander did devise, that all the lands and negroes he ad devised by the said will, except those negroes specifically given o Gerard Alexander, should be entailed from heir to heir, as by the aid will, duly recorded in the county court of Stafford, may more t large appear: And some time after making the said will, the said Robert died, so seised, after whose death the said John and Gerard Alexander, entered into the said lands, and took possession of the aid negroes, and having made partition and division thereof, one housand two hundred and eighty six acres of land, and four negroes, (all which are since dead) were allotted to the said Gerard, s his part of the land and negroes so to be divided; into which the aid Gerard entered, and also those other lands particularly devised o him the said Gerard, by Robert the testator, amounting in the whole to two thousand seven hundred and thirteen acres, and 1 became thereof seised in fee tail. And whereas the said Gerard Alexander is, and stands seised in fee-simple, of, and n two tracts of land, the one lying in the parish of Frederick, in the ounty of Frederick, granted by the lord proprietor of the northern eck, to the said Gerard, containing by estimation eight hundred nd seventy three acres; the other in the parish of Cameron, in the ounty of Fairfax, containing five hundred and forty acres, and upards, lately purchased of Nathaniel Smith; upon which said tracts he hath made very considerable improvements, and is also possessed f ten slaves, named Robin, Stire, Nell, Nan, David, Will, Milley, Rose, Solomon, and Joe, all Virginia born, as of his own proper laves, and it will be for the benefit and advantage of the heir in tail, nd those claiming in remainder and reversion under the will of the aid Robert to dock the intail of the said tract or parcel of land in he county of Fairfax, and to settle his said other lands, in the ounties of Fairfax and Frederick, with the slaves aforesaid to be nnexed thereto, being of greater value to the same uses. And forsmuch as notice has been published three Sundays successively, in he several churches in the said parish of Truro, that application would be made to this General Assembly, to dock the intail of the aid two thousand seven hundred and thirteen acres of land, and to ettle other lands and slaves of greater value to the same uses, purnant to your majesty's instructions.

II. May it therefore please your most excellent majesty, at the humble suit of the said Gerard Alexander, that it may be enacted, And it be enacted by the Lieutenant-Governor, Council, and Burgesses of this present General Assembly, and it is hereby enacted, by the authority of the same, that the said tract or parcel of land, with the appurtenances, containing two thousand seven hundred and thirteen acres, lying and being in the parish of Truro, and county of

Fairfax, so as aforesaid, devised by the last will and testament of the said Robert Alexander, and whereof the said Gerard Alexander is seised in fee tail; be, and the same is hereby vested in the said Gerard Alexander, his heirs and assigns, to the only use and behoof of him the said Gerard, his heirs and assigns forever. And that the said two several tracts or parcels of land herein before mentioned, the one granted by the Lord proprietor of the northern neck, to him the said Gerard; and the other purchased of Nathaniel Smith; and all and every the slaves before named, together with the future increase of the said female slaves, be, and the same are hereby vested in the said Gerard Alexander, and the heirs of his body lawfully begotten; and on failure of such heirs the same shall remain and descend to such person or persons, in the same manner, and under the same limitations and remainders, successively, as the said lands would have remained and descended, by virtue of the said before recited last will and testament of the said Robert Alexander, if this act had never been made.

III. Saving to the king's most excellent majesty, his heirs and successors, and to all and every other person and persons, bodies politic and corporate, their respective heirs and successors, other than
the persons claiming under the last will and testament of
92 the said Robert Alexander, all such right, title, interest, claim and demand as they, every, or any of them, should or might claim, if this act had never been made.

IV. Provided always, That the execution of this act shall be, and is hereby suspended, until his majesty's approbation thereof shall be obtained."

6 Hening, Statutes at Large, 1748 to 1755, page 399.

(c) An Act of the General Assembly of Virginia of November, 1762, for enlarging the town of Alexandria, in the County of Fairfax, which reads as follows:

"I. Whereas by an act of assembly made in the twenty-second year of the reign of his late majesty king George the second, entitled, an act for establishing a town at Hunting Creek warehouse, in the county of Fairfax, a town was erected and established on Potowmack river, by the name of Alexandria, in the said county, and it is represented to this present general assembly that all the lots by the said act included within the bounds of the said town are already built upon, except such of them as are situated in a low wet marsh, which will not admit of such improvements; and that divers traders and others are desirous of settling there, if a sufficient quantity of the lands of Baldwin Dade, Sibel West, John Alexander the elder, and John Alexander the younger, which lie contiguous to the said town, were laid off into lots & streets, and added to and made part thereof: Be it therefore enacted by the Lieutenant Governour, Council and Burgesses, of this present General Assembly, and it is hereby enacted by the authority of the same, That so much of the said adjacent lands as are included within the bounds hereinafter described shall be vested in the trustees of the said town, and

heir successors, for the time being, and shall be added to and made art of the said town of Alexandria, to wit: Beginning at the corner f the lot denoted in the plan of the said town by the figures 77, on he said river Potowmack, at the lower end of the said town, and to xtend thence down the said river the breadth of two half acres, and ne street thence back into the fields, by a line parallel to the lower ine of the said town, such a distance as to include ten half acre ots and four streets; thence by a line parallel with the present back ine of the said town to the extent of seventeen half-acre lots and ight streets, and from thence by a line at right angles with the ast to the river.

* * * * * * *

IV. And be it further enacted, by the authority aforesaid, That he freeholders and inhabitants of such of the said lots as are not art of and laid out upon the marsh included with the said addi- ional lands, as soon as the same shall be built upon and saved in he same manner as the lots in the said town were directed to be uilt upon and saved by the above mentioned act of assembly, and lso the freeholders, owners and proprietors of the lots on the said marsh, as soon as they shall have complied with the rules and orders hereinafter prescribed respecting those lots, shall then be entitled to, and have and enjoy, all the rights, privileges and 93 immunities, granted to and enjoyed by the other freehold- ers and inhabitants of the said town.

V. And whereas it was by the said act required that the grantee or grantees of every lot within the said town, when the same was by he said act established, should within the time therein mentioned erect, build and finish, on each lot conveyed to them by virtue of he said act, one house of the dimensions and according to the reg- ulations in the same act particularly expressed, under the penalty of forfeiting the same, but it is found impracticable to build on such of the said lots as are included within the said marsh: Be it there- fore further enacted, by the authority aforesaid, That the owners and proprietors of such marsh lands shall not be obliged to build hereon, as by the said act is directed, & shall not be subject or liable to any forfeiture of the same for not building thereon as aforesaid; but that such owners and proprietors, together with the purchasers of such of the said additional lots as shall be laid off on the said marsh, shall drain the same, so as to render them capable of improvements, either by building thereon, or turning the same into meadow grounds, in such manner as the said trustees shall order and direct, and shall pay their proportionable part of any expense occasioned by such draining to the said trustees, to be by them applied to the purpose aforesaid.'

VI. And be it further enacted, That if any such owner, proprietor or purchaser shall fail or refuse to pay such proportionable part of the said expense as shall be adjusted and awarded against him or them by the said trustees, such owner, proprietor or purchaser, shall forfeit their said lots in the said marsh, and the same shall be re-

vested in the said trustees, and shall and may be sold and conveyed to any other person or persons whatsoever, in the manner before directed; and the money arising from the sale of such lots shall be by the said trustees, from time to time, applied to such use, for the common benefit of the inhabitants of said town, as to them shall seem proper."

Hening's Statutes at Large, Vol. 7, pages 604 to 607, inclusive.

(*d*) An Act of the General Assembly of Virginia of October, 1779, for incorporating the town of Alexandria, in the county of Fairfax, which reads as follows:

"For incorporating the town of Alexandria in the county of Fairfax, Be it enacted, That it shall be lawful for the freeholders and house-keepers who shall have been resident in the said town three months next preceding such election, to meet at some convenient place in the said town yearly, on the second Tuesday in February, and then and there to nominate, elect, and choose by ballot, twelve fit and able men, being free-holders and inhabitants of the said town, to serve as mayor, recorder, aldermen and common councilmen for the same; the persons so elected shall within one week after their election, proceed to choose out of their own body, by ballot, one mayor, one recorder, and four aldermen, and the remaining six shall be common councilmen, whose authority shall
94 continue one year, and until others are chosen and qualified in their stead, and no longer, except such of them as shall be re-elected. That the mayor, recorder, aldermen, and common councilmen so elected, and those thereafter to be elected, and their successors shall, and are hereby made a body corporate and politick by the name of mayor and commonalty of the town of Alexandria, and by the said name to have perpetual succession with capacity to purchase, receive, and possess lands and tenements, and all goods and chattels, either in fee or any lesser estate therein, and the same to give, grant, let, sell or assign; and to plead and be impleaded, prosecute and defend all causes, complaints, actions, real, personal, or mixt; and to have one common seal and perpetual succession: That the person who shall be elected the first mayor of the said town, shall, within one week after his election, take an oath or make solemn affirmation before some one justice of the quorum in the commission of the peace for the said county of Fairfax, for the due and faithful execution of his office; and every succeeding mayor shall be qualified to his office before the mayor for the time being. Every recorder, alderman, and common councilman, before he shall be admitted to execute his respective office, shall take an oath or make solemn affirmation before the mayor for the time being for the due and faithful execution of his office. No person shall hold or execute the office of mayor within the said town for more than one year, within any two years.

The mayor, recorder, and aldermen for the time being and their successours forever, are hereby declared and constituted justices of the peace within the said town, and to have power to appoint constables, surveyors of the streets and highways, and to hold a court of

stings once in every month, within the said town; and to appoint rks, a serjeant and other proper officers, from time to time, where ere shall be occasion. The said serjeant shall have the same wers in serving process, levying executions, and making distress delinquents in civil and criminal prosecutions within the limits the said town, as the sheriff of the said county is by law invested th, and to settle and allow reasonable fees, not exceeding the fees owed in the county courts: That they, or any four or more of em (whereof the mayor or recorder for the time being shall be e) shall have jurisdiction, and on the second Thursday in every onth hold pleas of actions, personal and mixt, arising within the d town; so as the demand in such action, personal or mixt, does t exceed ten pounds current money, or one thousand pounds of bacco; may adjourn from day to day, and as a court of record ve judgment and award execution thereon, according to law. Also at the mayor, recorder, and aldermen of the said town shall have, e, and exercise all the powers, jurisdictions, and authorities out of urt touching or concerning any crime or offense which any jus- e or justices of the peace of a county now have, or can or may use d exercise, and in the same manner to summon a court of justices the county for the examination and trial of any criminal; and that as well in civil as criminal cases the authority and juris- diction of the mayor, recorder, and aldermen of the said town, shall extend half a mile without and around the limits the said town.

Provided always, and be it further enacted, That it shall not be wful for the said court of hustings to tae cognizance of, or hold lea in any action, personal or mixt, except the debt was contracted r cause of action originated within the said town or limits afore- id.

* * * * * * *

Hening's Statutes, Vol. 10, pages 172 to 176, inclusive.

(*e*) An Act of the General Assembly of Virginia of 1786, to re- eal in part an act entitled "An Act for regulating the streets in nd adjoining to the town of Alexandria," which reads as follows:

"Be it enacted by the General Assembly, That so much of an act, ntituled "An act for regulating the streets in and adjoining to the own of Alexandria," as relates to the contraction of Washington- treet, between Queen-street and Oronoko-street, shall be, and the ame is hereby repealed."

Hening's Statutes, Vol. 12, page 362.

(*f*) An Act of the General Assembly of Virginia of 1786, to ex- end the limits of the town of Alexandria, which reads as follows:

"Be it enacted by the General Assembly, That the limits of the own of Alexandria, shall extend to, and include as well the lots formerly composing the said town, as those adjoining thereto, which have been and are improved."

Hening's Statutes, Vol. 12, page 362.

(*g*) An Act of the General Assembly of Virginia of November 30, 1796, for altering the day of the court of Hustings of the town of Alexandria, which reads as follows:

"Be it enacted by the general assembly, That from and after the first day of January next, a court of Hustings for the town of Alexandria, shall be held by the mayor, recorder, and aldermen thereof, on the first Monday in every month, instead of the day heretofore appointed by law.

And be it further enacted, That the quarterly sessions of the said court shall be held in the months of April, July, September and December, instead of the months heretofore appointed by law."

Code of Laws for Alexandria, 1800, page 7.

(*h*) An Act of the General Assembly of Virginia concerning the town of Alexandria, of December 16, 1786, which reads as follows:

"Be it enacted by the General Assembly, That it shall and may be lawful for the mayor and commonalty of the town of Alexandria, to recover of, and from all and every person or persons, holding land within the limits of the said town, and who have no other property within the said town, on which the taxes or assessments im-
96 posed on such property for paving the streets therein can be levied, the amount of such taxes or assessments by motion in the court of the county or corporation where such person or persons reside: Provided, That such person or persons have ten days' previous notice of such motion, and the amount of taxes or assessments due from him, her or them. And Provided also, That nothing herein contained, shall be so construed as to empower the court to give judgment against any person or persons residing out of the limits of the corporation of Alexandria, and owning ground therein, having no house on it where the service to compensate which, the tax or assessment has been or may be imposed, has been or may be performed before the last day of February, one thousand, seven hundred and ninety-seven, but for the collection of such tax, the same means may be used which would have been lawful before the passage of this act.

Section 2d. The court in which such motion shall be made, if it shall appear that such taxes or assessments are justly due, shall give judgment for the amount thereof, with costs, and award execution as in other cases.

Section 3d. And whereas, it is necessary for the preservation of the health of the inhabitants of the town of Alexandria, that nuisances within the limits thereof, should be removed and prevented: Be it further enacted, That when the proprietor of any lot of ground within the said town, shall fail or refuse to fill up any pond of water, or remove any other nuisance on his ground, being thereto required by order of the common council, it shall and may be lawful for the mayor and commonalty to cause such nuisance to

be removed, and to recover such sum or sums of money as may be expended in the removal thereof, of and from the proprietor or proprietors of the ground, on which such nuisance was, in the same manner as herein before prescribed for the recovery of taxes or assessments. Provided always, That if such proprietor shall not reside within the said town, publication of the order of the common council for four weeks successively in the Alexandria Gazette, shall be deemed sufficient notice to such proprietors; and thereupon the mayor and commonalty shall be authorized to recover the money in manner aforesaid."

Code of Laws for Alexandria, 1800, page 7.

(*i*) An Act of the General Assembly of Virginia of December 13, 1796, adding to the town of Alexandria certain lots contiguous thereto, and for other purposes therein mentioned, which reads as follows:

"Whereas several additions of lots contiguous to the town of Alexandria, have been laid off by the proprietors of the land, in lots of half an acre each, extending to the north to a range of lots, upon the north side of a street called Montgomery; upon the south, to the line of the district of Columbia; upon the west, to a range of lots upon the west side of West street, and upon the east, to the river Potomac; that many of the lots in these additions, have already been built upon, and many more will soon be improved. And whereas, it has been represented to the General Assembly, that the in-
97 habitants residing on said lots, are not subject to the regulations made and established for the orderly government of the town, & for the preservation of the health of the inhabitants, by the prevention and removal of nuisances, upon which their prosperity and well-being does very much depend.

Section 1st. Be it therefore enacted, That each and every lot or part of a lot within the aforesaid limits, on which at this time is built a dwelling house of at least sixteen feet square, or equal thereto in size, with a brick or stone chimney, and that each and every lot within said limits which shall hereafter be built upon, shall, be incorporated with the said town of Alexandria, and be considered as part thereof.

Section 2d. And that it shall and may be lawful for the mayor and commonalty of the said town, to compel the proprietor of any lot or lots within the limits aforesaid, and which are not incorporated with the said town, to remove all and every nuisance thereon, which may have a tendency to injure the health of the inhabitants in the same manner, and by the same mode, as is, or shall be prescribed by the regulations of the said town, for the removal of nuisances therein, or on lots incorporated therewith, and to proceed against the proprietor of any such lot, in the same manner as they are, or shall be empowered to proceed against any proprietor of a lot within the said town, for the recovery of the expense of removing such nuisance

where the proprietor shall fail or refuse to remove it, and it shall be removed at the expense of the town."

Code of Laws for Alexandria, 1800, page 8.

(*j*) Act of Congress of February, 1804, amending the charter of the town of Alexandria.

2 U. S. Statutes at Large, page 255.

(*k*) An Act of Congress of May, 1826, amending the charter of the town of Alexandria.

4 U. S. Statutes at Large, page 162.

(*l*) An Act of Congress of February, 1843, amending the charter of the town of Alexandria.

5 U. S. Statutes at Large, page 599.

(*m*) An Act of the General Assembly of Virginia of May 7, 1852, to amend the charter of Alexandria. Section 2 and Section 22 of said Act read as follows:

"2. The town of Alexandria shall hereafter be known and called by the name of the "City of Alexandria," and shall be and is hereby divided into two districts by a line running east and west, at an equal distance between King and Prince streets, beginning at the river Potomac and extending to the western boundary of said city; and all that part of the city which is situate north of the said dividing line shall be called the northern district; and all that part of the city which is situate south of the dividing line shall be called the southern district of the city of Alexandria; and when any house or lot shall be situate partly in each district, it shall be
98 considered as lying in that district where the greater part of said house or lot is situate, and shall be assessed accordingly. Each of the districts aforesaid shall be divided into two electoral wards, by a line running north and south through the middle of Pitt street, to be called respectively the first, second, third and fourth wards. None of the taxes on the valuation of real property which shall hereafter be collected in the northern district, shall be expended in the regulating or filling up, or paving or repairing the streets or sinking of wells, or building of bridges in the southern district; nor shall any of the taxes on the valuation of real property which shall hereafter be collected in the southern district, be expended in the regulating or filling up, or paving or repairing the streets, or sinking of wells or building of bridges in the northern district. But all moneys to be expended upon the aforesaid improvements in either district, shall be raised by an assessment on the valuation of real property in each district respectively, at the times and in the manner the city council shall order and direct. It shall be the duty of the assessors and other public officers to keep the accounts of each district separate and distinct in regard to the assessments for the aforesaid local purposes; and all other taxes which are now or shall hereafter be assessed or levied upon the valuation of real property or

other subjects, together with the fines and the rents issuing from the property belonging to the corporation, and all their other resources shall constitute a general fund to be appropriated as the city council shall direct. The city council shall have power, from time to time, to alter the boundaries of the wards, and to increase their number."

"22. The limits of the city of Alexandria shall be extended on the north and west as follows: Beginning in the Potomac river at a point distant northerly in the direction of Fairfax street, four hundred and nineteen feet two inches from the north line of the present corporate limits of the town of Alexandria in said river, and running thence westerly, parallel with said north line, to a point at which it would intersect the present western line if extended north four hundred and nineteen feet ten inches; thence southwardly with the present western line; but the said city council shall have authority to make such police and sanitary regulations over the territory reaching ten feet west of the west bank of Hoof's or Mushpot run; then parallel to, and at that distance from said run to the line dividing Alexandria from Fairfax county; then southeasterly with said dividing line, to the present southwestern corner of the said town of Alexandria," etc.

Acts of 1852, pages 234-235-241.

(*n*) An Act of the General Assembly of Virginia of February 18, 1853, amending the 22nd and 5th sections of the Act entitled "An Act to amend the charter of the city of Alexandria." Section 22 reads as follows:

"22. The limits of the city of Alexandria shall be extended on the north and west, so as to embrace the territory within the following bounds: Beginning in the Potomac river at a point distant northwardly, in the direction of Fairfax street, four hundred and
99 nineteen feet two inches from the present north line of the corporate limits of the town in said river, and running westwardly, parallel to said north line, to intersect the west line of said limits, produced northwardly four hundred and nineteen feet two inches; thence southwardly with said west line produced, to the northwest corner of the said limits; thence eastwardly, with said north line into the river; then northwardly to the beginning. Beginning again at the intersection of the northwestern line of said limits with the north line of Cameron street; then southwardly with said western line to the county line; then northwestwardly with the county line to the point where it intersects the brick wall on the south side of the Little river turnpike road; then northwardly by a straight line to the east corner of John Hoof's lot on the south side of King street extended; then crossing King street extended to the west corner of the lot of the late Col. Francis Peyton; then with the west line of said lot and the course thereof to the north line of Cameron street extended; then by a straight line to the beginning. And the city council of Alexandria shall have power to make all needful police and sanitary laws and regulations in and over the territory

extending ten feet west of Hoof's or Mushpot run, and lying between the first of the above courses extended and the county line," etc.

Acts of 1852-3, pages 314-315.

(*o*) An Act of the General Assembly of Virginia of April 2, 1858, to amend the charter of the city of Alexandria. Sections 1 and 2 read as follows:

"1. Be it enacted by the general assembly, that the second section of the act to amend the charter of Alexandria, passed on the seventh day of May eighteen hundred and fifty-two, be amended and re-enacted so as to read as follows:

"2. The town of Alexandria shall hereafter be known and called by the name of The City of Alexandria; and shall be divided into four wards; The first ward shall comprise all that part of said city lying east of the middle of Pitt street, parallel to and equidistant from King and Prince streets. The second ward shall comprise all that part of said city lying east of the middle of Pitt street, and north of the said line between King and Prince streets. The third ward shall comprise all that part of said city lying west of the middle of Pitt street, and north of a line drawn from the middle of Pitt street to the western limit of the city, parallel to and equidistant from King and Prince streets. And the fourth ward shall comprise all that part of said city lying south and west of the two last mentioned lines, respectively. When any house or lot shall be situated partly in two wards, it shall be considered as lying in that ward in which the greater part thereof shall be. The city council shall have power from time to time to alter the boundaries of the wards, and to increase their number, designating the additional wards in numerical order. All the taxes, fines, forfeitures, rents, revenues, and other resources of the corporation shall constitute a general fund, to be appropriated as the city council shall lawfully direct."

Be it further enacted, that the first section of the act to amend the twenty-second and fifth sections of the act entitled an act to amend the charter of the city of Alexandria, passed February the eighteenth, eighteen hundred and fifty-three, be and the same is hereby amended and re-enacted so as to read as follows:

"1. The limits of the city of Alexandria shall be as follows: Beginning on the Potomac river at a point distant, northerly, in the direction of Fairfax street, five hundred and ninety-five feet nine inches from the north line of Montgomery street, as now established in said city, and extended into said river, and running thence westerly and parallel with said north line to a point at which this course will intersect a line one hundred and twenty-three feet five inches west of and running parallel to the western line of West street as now established when extended; thence southerly, parallel with West street, to the north line of Cameron street as now established; thence westerly, in the direction of the north line of Cameron

Street extended, to a point in a line with the west line of the lot of the late Francis Peyton, on which he resided; thence southerly, parallel with West street, to the south line of King street extended; thence in a straight line to a point in the line, dividing the counties of Fairfax and Alexandria from each other, ten feet west of Hoof's run; thence southerly, parallel to and distant ten feet from Hoof's run, to the middle of Hunting creek; then with the middle of Hunting creek, into the Potomac river, then up the said river to the beginning."

Acts of 1857-'8, page 176.

(*p*) Grant of the Governor of Virginia to Allen and Robert Dodge of a tract of land containing 97 acres, 2 roods, being accretions to Alexander's Island, dated October 1st, 1867, as follows:

Book 118, Page 454.

Francis H. Pierpoint, Esquire, Governor of the Commonwealth of Virginia.

To all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 20 day of December, one thousand eight hundred and sixty six, by virtue of Land Office Treasury Warrant No. 30102, there is granted by the said Commonwealth unto Allen & Robert P. Dodge, a certain tract or parcel of land containing ninety seven acres and two roods, being accretions to Alexander's Island, lying in the County of Alexandria and bounded as follows viz: Beginning at a stake on the Potomac River shore, south of the Turnpike & southern corner of the island and the end of the 48th line of Jackson City, or Alexander's Island, & running thence the following courses and distances viz: 1st N. 68¼° E. 14 poles; 2nd, N. 47½° E. 14 poles, 3rd, N. 7¼° E. 5 poles; 4th, N. ¼° E. 10 poles; 5th, N. 74¼° E. 4 poles; 6th, S. 62° E. 2 poles, 7th, N. 38¾° E. 14 poles; 8th, N. 21½° W. 2 poles; 9th, N. 47½° E. 13 poles; 10th, N. 74½° E. 30 poles; 11th, S. 74½° E. 5 poles to a stake the south east corner of the island & opposite the main channel of the river,
101 thence the following courses and distances down the river, and with meanderings thereof viz: 12th, S. 64° E. 48½ poles; 13th, S. 20½° E. 35 poles; 14th, S. 22½° E. 58 poles; 15th, South 38 poles; 16th, S. 4 W. 23 poles; 17th, S. 16½° E. 49 poles; 18th, S. 17¾° E. 39 poles; 19th, S. 5¼° E. 264 poles to the most extreme point south, thence with the meanderings of the river here reduced to a straight line N. 10° W. 480 poles to a stake, thence by a straight line to the beginning.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Allen & Robert Dodge, and their heirs forever.

In witness whereof, The said Francis H. Pierpoint, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his

hand, caused the Lesser Seal of the Commonwealth to be affixed at Richmond, on the first day of October, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Commonwealth the 92nd.

[SEAL.] FRANCIS H. PIERPOINT.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office.

Witness my hand and seal of office, this 28th day of March, 1916.

JNO. W. RICHARDSON,
Register of the Land Office.

(*q*) Survey and plat of grant to Allen and Robert P. Dodge, marked Exhibit No. 16.

This stipulation is made subject to all the terms, conditions and reservations contained in the stipulation heretofore filed in this case on January 17, 1916, and this stipulation shall not, nor shall anything herein, be construed to preclude either party from offering, at the trial of the issue upon the plea of abatement, or upon the trial of any other issue in this case, any other or further admissible evidence.

Witness our hands this 19th day of April, 1916.

HENRY H. GLASSIE,
Attorney for Plaintiff.
JAS. R. CATON,
HAMILTON, YERKES & HAMILTON,
Attorneys for the Defendant.

102 *Further Stipulation.*

Filed November 22, 1916.

* * * * * * *

It is stipulated and agreed by counsel for the plaintiff and for the defendant that the following documents referred to in the brief of plaintiff's counsel shall be deemed as offered on behalf of the plaintiff for the purposes, upon the terms, under the conditions, in the manner and with the effect stated with respect to the matters therein offered in the stipulation filed in this cause on January 17, 1916:

(*a*) "Resolution appointing a select committee of five, relative to the Southern and Western limits of this State," passed January 7, 1832, Laws of Maryland, Session beginning the 26th day of December, 1831. Resolution No. 126.

aid resolution contains, among other things, the following:

Resolved, That said committee be instructed to enquire, and rt to the senate, whether the southern and western limits of the ntry as defined in the original charter from the King of Great ain to Lord Baltimore, ought now to be taken, and acknowledged he southern and western limits of this State, and, if not, to ascer- and report to the senate, what are the true southern and western ts of this State."

b) "Resolution relating to the Western and Southern Limits of state," passed March 5, 1832, Laws of Maryland, Session begin- g the 26th day of December, 1831. Resolution No. 128.

aid resolution contains, among other things, the following:

2. In regard to the information sought by the second resolution, r committee believe and respectfully report, that the southern western limits of the country, as defined by the original charter from the King of Great Britain to Lord Baltimore, ought now to be the southern and western limits of this state, if viewed as a strict matter of right in an adversary proceeding against sister state of Virginia."

* * * * * * *

* * * But every important event in our history touching s subject, shows a continual claim, on our part, down to the year hteen hundred and eighteen, when certain matters of compromise e offered, but not being accepted, remitted this state to her orig- l rights."

'4th. * * * The general convention of delegates and rep- entatives, who framed the constitution of Virginia, met at Wil- msburg on the sixth day of May, seventeen hundred and seventy- , but a short time before the declaration of independence, when rginia was in her first love as a sister state, it was fit and proper her to make such a recognition. But her reservation in regard the use of the rivers Potomac and Pocomoke, were wholly gra- tous; and the two states afterward, by compact, on the twenty- ghth day of March, in the year of our Lord one thousand seven ndred and eighty-five regulated and settled the jurisdiction and vigation of those rivers, and that part of Chesapeake bay within e territory of Virginia. If then Virginia had no right to any ritory within the limits of Baltimore's charter, and made the cognition purely from abundant caution, and to prevent quarrels d misunderstandings with her sister Maryland during the revo- tionary struggle, it is nevertheless a recognition of our territorial nits within the charter, to the utmost extent of our true bound- ies, when fully ascertained and defined."

"6th. * * * Notwithstanding the opinion of your commit- e that in a strict legal adversary proceeding against Virginia, the mmon call of the first fountain ought, as originally intended, to

start a meridian for the western boundary at the most western source of the South Branch, (and verging towards the south unto the further bank of said river, and following the same for the southern limits on the west and south,) they nevertheless recommend that the whole matter should be left open, for the most friendly and amicable adjustment. Your committee recommend to the consideration of the general assembly, several resolutions.

Resolved by the General Assembly of Maryland, That the governor and council of this state be, and they are hereby authorized and requested, to appoint three commissioners on the part of this state, to meet such commissioners as may be appointed on the part of the commonwealth of Virginia, to settle and adjust by mutual compact, between the two governments, the southern and western limits of this state, and the dividing and boundary lines
104 between this state and the commonwealth of Virginia, and also to settle and adjust as aforesaid, any claim of this state, or of the commonwealth of Virginia, to territory within the limits of either state."

(*c*) "Resolutions relative to the controversy between this state and the state of Virginia, in regard to the Southern and Western boundaries," passed March 14, 1834, Laws of Maryland, Session beginning the 30th day of December, 1833. Resolution No. 80.

(*d*) "Statement on the part of the Commissioners of Maryland," contained in the volume entitled: "Report and Accompanying Documents of the Virginia Commissioners appointed to ascertain the Boundary Line between Maryland and Virginia." Richmond: R. F. Walker, Sup't Public Printing, 1873. Said Statement submits to the Virginia Commissioners the following line to be established by compact between them:

"Beginning at low-water mark at the divisional line between the two States of West Virginia and Virginia, upon the southwest coast or shore of the Potomac River; thence following the said river at said low-water mark, to all wharves and other improvements now extending, or which may hereafter be extended, by authority of Virginia from the Virginia shore into the said river beyond low-water mark, and following the said river, around said wharves and other improvements, to low-water mark on the southwestern side thereof, and following said river in the same manner down to the easternmost angle or Smiths point at the mouth of the said river Potomac, where it flows into the Chesapeake Bay." (p. 69.)

(*e*) "Report on the Survey of the Potomac," printed by Order of the Senate, Washington, 1823; Minutes of the Conference of the Commissioners appointed by Virginia to confer with the Legislature of Maryland, page 51.

(*f*) Letter of George Washington to the Governor of Virginia suggesting a plan for the improvement of the Potomac River (Sparks, "Writings of Washington," Vol. 9, pp. 58–59.)

(*g*) Letter from George Washington to the Marquis de Lafayette, Annapolis, December 23, 1784. (Sparks, "Writings of Washington," Vol. 9, p. 82.)

This stipulation shall not, nor shall anything herein, be construed to preclude either party from offering, at the trial of the issue upon the plea in abatement or upon the trial of any other issue in this cause, any other or further admissible evidence.

Witness our hands this 22nd day of November, 1916.

HENRY H. GLASSIE,
Attorney for the Plaintiff.
HAMILTON & HAMILTON,
JAS. R. CATON,
Attorneys for the Defendant.

Supreme Court of the District of Columbia.

Wednesday, November 22nd, 1916.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice presiding.

* * * * * * *

The plaintiff and defendant, by their respective counsel, having stipulated, in open court, that the issue joined upon the defendant's plea to the jurisdiction, should be submitted to and tried by the Court without a jury, the Court upon consideration thereof, doth find said issue against said defendant and in favor of the plaintiff, and finds and says that the plaintiff's cause of action did not arise, and the real estate described in plaintiff's declaration was not situated within the limits of the City of Alexandria, and Commonwealth of Virginia, but within the limits of the District of Columbia and within the jurisdiction of this Court.

Thereupon, it is considered by the Court here that the Court will, and does take cognizance of the cause aforesaid, and that the defendant further answer the plaintiff's said declaration, and leave so to do, within twenty days from the date hereof, is hereby granted to the said defendant.

Memo.

Be it remembered that on the trial of the issue joined upon the defendant's plea to the jurisdiction of this court, the parties filed certain stipulations on, to wit: January 17, 1916; April 21, 1916, and November 22, 1916, which are hereby made a part of the record and the said defendant excepted to certain rulings of the court, and tendered its bill of exceptions which it prayed the court to sign, seal, enroll and make a part of the record, which is accordingly done this day.

The foregoing order will be entered by the clerk.

Bill of Exceptions.

Filed November 22, 1916.

* * * * * * *

Be it remembered that the issue joined on the defendant's plea to the jurisdiction came on for trial before Mr. Justice Stafford, holding Circuit Court, Division No. 2, and a jury, whereupon, before the impaneling of a jury, the plaintiff and the defendant, by their respective counsel, in open court, stipulated that a jury be dispensed with upon the trial of said issue, and the impaneling of a jury be waived by both parties, and said issue joined upon the said plea to the jurisdiction, in respect of matters of fact, as well as in respect of matters of law, be submitted to the Court, so being held by said Justice, for trial and determination.

107 Thereupon, the respective parties gave in evidence and submitted to the Court the matters set forth and contained in the stipulation and supplemental stipulations filed in this case, respectively, on January 17, 1916; April 21, 1916; and November 22, 1916, together with the exhibits referred to therein, and the same were heard and considered by the Court, which said stipulations are incorporated and made a part of this bill of exceptions, as if herein fully and at length repeated, said stipulations containing all the evidence offered and introduced on the trial of the issue joined by the plaintiff and defendant respectively.

And, thereupon, the defendant requested and moved the Court to rule as follows:

"The Court rules, as a matter of law and fact, that the land sought to be recovered in plaintiff's declaration, being shown by the evidence to lie westward and shoreward of a line drawn from Point Lumley at low-water mark to Jones's Point at low-water mark, is not within the boundaries and jurisdiction of the District of Columbia and is not within the jurisdiction of this Court, and is within the jurisdiction and boundaries of the City of Alexandria and State of Virginia, and is within the jurisdiction of the courts of said City and State, and the issue upon the defendant's plea to the jurisdiction is, therefore, found for the defendant."

But the Court refused to grant said request and motion, to which refusal the defendant duly excepted on the ground that the said ruling of the Court is not sustained by the evidence and the law in this cause.

Thereupon the plaintiff requested and moved the Court to rule as follows:

108 "The Court, finding that the actual location on the earth's surface of the land sought to be recovered is indisputably shown by the evidence to be within the original boundary lines

the District of Columbia and eastward of the line of mean gh-water on the right or western bank of the river as it existed the date of the establishment of the District, as well as at the date the beginning of the work of reclamation described in the evi- nce, rules that the question whether the said land is within the strict of Columbia is a question of law, and the settled law of the strict of Columbia being that its boundary on the right bank of the otomac River is the actual line of Mean high-water of said river, e said land is held as matter of law to be within the boundaries and risdiction of the District of Columbia and within the jurisdiction of is Court, and the issue joined upon defendant's plea to the jurisdic- on is, therefore, found for the plaintiff."

The defendant objected to the granting of said request, but the ourt overruled said objection and granted the same, to which ruling he defendant duly excepted on the ground that the said ruling of he Court is not sustained by the evidence and the law in this cause, nd the Court, thereupon, in accordance with said ruling in point f law, found the issue joined upon its plea to the jurisdiction against he defendant and in favor of the plaintiff.

To which last mentioned action of the Court, the defendant, by its ounsel, also excepted on the ground that the said ruling of the Court is not sustained by the evidence and the law in this cause, and prayed that the Court would sign and seal, this, its bill of exceptions, according to the form of the statute in such case made and 109 provided, and which is accordingly done, this 22d day of November, 1916, now for then.

WENDELL P. STAFFORD,
Justice.

O. K.

H. H. G.

Plea.

Filed November 22, 1916.

* * * * * * *

And the said defendant, by its Attorneys, comes and says that it is not guilty of the said trespass above laid to its charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained. And of this the said defendant puts itself upon the country.

HAMILTON & HAMILTON,
JAMES R. CATON,
P. P.

Joinder in Issue.

Filed November 28, 1916.

* * * * * * *

The plaintiff joins issue on the plea filed by defendant to plaintiff's declaration.

HENRY H. GLASSIE,
Attorney for Plaintiff.

Please take notice that the issue joined in this cause will be tried at the next term of this court.

HENRY H. GLASSIE,
Attorney for Plaintiff.

To James R. Caton, Esq., and Hamilton & Hamilton, Attorneys for Defendant.

110 *Stipulation of Facts.*

Stipulation "B."

Filed May 23, 1919.

* * * * * * *

For the purpose of facilitating and shortening the trial of the general issue joined in this case, it is stipulated and agreed by Counsel for the Plaintiff and for the Defendant that, on the trial of the general issue, the statements of matters of fact, hereinafter made on behalf of either party, shall be taken and treated as if witnesses adduced and sworn on behalf of the parties specified had testified in open Court, to the same tenor and effect, subject, however, to all proper objections to the admissibility, competency and sufficiency of such evidence, and that the recitals, or abstracts, of the contents or purport of the charters, grants, statutes, treaties, compacts, deeds, instruments, proceedings, decisions or abstracts and other documentary evidence, hereinafter contained, offered in evidence, or made on behalf of either party, shall be taken and treated as if the authentic originals thereof were duly offered in evidence by the parties specified, subject, however, to all proper objections to the admissibility, competency, or sufficiency of the originals, to which originals, and the whole text thereof, (should occasion require) reference may be had by either party at any trial or hearing; that is to say:

I.

On behalf of the Defendant, The Marine Railway & Coal Company, the following is offered in evidence on the trial of the general issue:

(*a*) The description of the property claimed by the Defendant and all the grants, decisions, proceedings, abstracts of con-
111 veyances and other muniments of title and plats, surveys, instruments, documentary evidence and statements of fact following, to wit:

(*b*) *Description of Property of the Defendant.*

Lot of ground situated in the City of Alexandria, State of Virginia, with the buildings and improvements thereon, described as follows: Beginning on the east side of Union Street the distance of one hundred and seventy-six feet, seven inches south of Gibbon Street, and running from thence east in a straight line parallel to Gibbon Street, into the Potomac River; returning thence to the point of beginning and running thence south from the said beginning, and binding on Union Street four hundred and fifty-three feet, two inches, more or less, to a point one hundred and seventy-six feet, seven inches north of Jefferson Street; thence east in a straight line, parallel to Jefferson Street, into the Potomac River, and thence north, in a straight line, parallel to Union Street, to the first line, together with all rights and appurtenances to the said lot of ground belonging or in anywise appertaining.

(*c*) *Plat of Property of the Defendant.*

(See Plat No. —).

(*d*) *Grant to Robert Housing*, 1669.

The Howsing patent for 6000 acres, lying and being on the freshes of the Potomac River, etc.

(1) To all &c. whereas &c. Now Know yee that I the said Sr. Wm. Berkeley Knt. Governor &c. give and grant unto Mr. Robt. Howsing six thousand acres of land scituate lying and being upon the freshes of Potomack River on the west side thereof
112 above the dividing branches of ye same beginning at a red oake standing by a small branch or a run of water neare opposite to a small Island commonly called and known by the name of my Lords Island, extending downe Potomack River various courses 3152 po. makeing a S. Wtly line to a *pokecory* standing at the north point of a creek named by the English Indian Cabin Creeke wch. Creeke divides this land and a tract of land surveyed for Jno. Matthewes, from the said pokecory N. W. and

by W. up the said Creeke and maine branch 520 po. from thence N 1940 po. finally E. 720 po. to the red oake begun at, including sev'all small creekes or inlets for the said quantity. The said land being due pr Trans of 120 psons &c To have and to hold &c. To be held &c. Yeilding and paying, &c. Dated ye one and twentyeth day of October 1669.

(e) *The Patent to the Northern Neck of Virginia, in* 1688.

In September 1688 King James II, by Royal Patent, granted to Thomas, Lord Culpeper, what was known as the Northern Neck of Virginia, described as follows: All that entire tract, territory or parcel of land situate, lying and being in Virginia in America, and bounded by and within the first heads or springs of the rivers Tappahannock al Rappahannock and Quiriough al Patawonuck Rivers, the courses of said rivers from their said first heads or springs as they are commonly called and known by the inhabitants of those parts and of the Bay of Chesapeake, together with the said rivers themselves and all the islands within the outermost banks thereof, and the soil of all and singular the premises, and all lands, woods, underwoods, timber and trees, wayes, mountains, swamps, marshes, waters, rivers, ponds, pools, lakes, watercourses, fishings, streams, havens, ports, harbors, bays, creeks, ferries, etc. "To have and to hold the same unto the said Thomas, Lord Culpeper, his heirs and assigns forever."

113

(f) *Confirmation of Prior Grants to the Culpeper Grant.*

6 Hening's Statutes at Large, Chapter 55, page 198. An act for confirming the grants made by His Majesty within the bonds of the Northern Neck, as they are now established. Passed October 27th, 1748.

I. Whereas in the late dispute and controversy, touching the limits and boundaries of the several letters patent granted by their late Majesties, King Charles II, and King James II, unto the ancestors of the Right Honorable Thomas, Lord Fairfax, it hath been adjudged and determined by His present Majesty in Council, that the said letters patent do include all that tract or territory of land between the rivers of Patowmack and Rappahanock, and the line now marked from the headspring of the said river Patowmack to the headspring of Rappahanock, commonly called the Conway; in which said tract or territory of land, as is before described, many adventurers and planters have taken up great quantities of land, and obtained grants and patents thereof from the Crown, under the seal of this Colony; and whereas the said Thomas, Lord Fairfax, hath consented, before the King, in Council, that the several grants and patents made by the Crown of the lands included in the boundary aforesaid, should be confirmed to the several grantees, their heirs and assigns; to be held, nevertheless, of the said Lord Fairfax, under the like rents, services, profits and emoluments as

ould be paid, done and arise by and from the said grants made
y the Crown.

2. Be it therefore enacted, by the Lieutenant Governor, Council and Burgesses of this present General Assembly, and it is
14 hereby enacted by the authority of the same, that all grants and patents, whatsoever, under the seal of this Colony, for nds situate and lying within the limits and boundaries of the tters patent, granted to the ancestors of the said Lord Fairfax, as ie same are now settled and determined, heretofore made and anted by the Crown, shall be held, deemed and taken to be valid nd effectual; and the adventurers and planters to whom the same ere granted, their heirs and assigns, shall, forever hereafter, eaceably and quietly have, hold and enjoy the said granted prem-es, respectively, according to such granted estates, under the rents nd services in the said grants reserved; to be paid and performed to e said Thomas, Lord Fairfax, his heirs and assigns forever: Any is-recital or defect in the said grants notwithstanding."

History of Title of Defendant Given in Alexander vs. Birch.

ourt of Appeals of Virginia. Fall Term, 1791. Reported First Washington, Virginia Reports, Page 34.

In the case of Birch vs. Birch, decided by the Court of Appeals Virginia at the Fall term, 1791, the Court said:

"This was an appeal from the District Court of Dumfries, in an ectment brought by the appellee. The jury found a special verdict. That Sir William Berkeley, Governor of Virginia, granted to Robert lowsen, the lands contained within a patent bearing date October lst, 1669, whereof the lands in question are a part, lying within ie proprietary of the Northern Neck, which patent they find in these words: To all &c." The patent is in the usual form,
15 granting 6000 acres of land, in consideration of the transportation of a number of persons into the Colony and is abreviated thus, "To have &c. Yielding &c. Provided &c."—They nd the Act of Assembly passed in the year 1736, entitled "An Act r confirming and better securing the titles to land in the Northern eck, held under the Right Honorable Thomas, Lord Fairfax, aron of Cameron, in that part of Great Britain called Scotland." lso the Act passed in the year 1748, entitled "An Act for confirmng the grants made by His Majesty, within the bounds of the Northrn Neck, as they are now established." "That on the 13th day of ctober, 1669, Howsen, being seized of the lands contained in the foresaid patent, assigned and conveyed all the lands aforesaid therein ontained, to John Alexander by deed poll, recorded in Stafford ourt which they also find in haec verba."

"That John Alexander entered, and was seized and possessed as he law requires, and by paper purporting to be his will, devised 500 cres of the said land to John Dry, 200 to Elizabeth Hoomes, and the esidue to his two sons, Robert and Philip, and their heirs."

"That after the death of the said John Alexander, his son, and heir at law, Robert, by a deed executed in February, 1690, confirmed to his brother, Philip, the lands left him by the said will, being a moiety of the land in question. That in February, 1693, the said Philip executed a deed to his brother, Robert, of all his share and interest in the land in the above mentioned patent, with a reservation of 500 acres, which are no part of the lands in question, and neither Philip nor his heirs, nor any claiming under him, have since claimed any part of the land in question."

116 "That the said Robert Alexander, after the said conveyance from his brother, entered into the land in the declaration mentioned, being part of the land contained in the aforesaid patent, and was seized and possessed thereof as the law requires and so continued till his death, which happened before the 1st of June 1704, having previously thereto made his will, bearing date the 22nd of December, 1703, whereby he devised to his sons Robert and Charles the lands in question in fee simple, equally to be divided, which will they find in haec verba."

"That the said Robert left two sons, Robert his eldest, and Charles who died intestate and without issue. That Robert, after the death of his brother, was seized and possessed as the law requires, of all the land in question, and so continued until his death, which happened in the year 1735, leaving two sons, John his eldest, and Gerard—also two daughters, Sarah and Parthenia; that by his will dated in 1735, he devised several parcels of land to his said sons and daughters, and the lands in question, comprehended within the description of the residue of his real estate, to his sons John and Gerard, equally to be divided in tail," which will is also found.

"That the said John and Gerard entered into the lands in question and were thereof seized and possessed as the law requires, and that John continued so seized and possessed until the time of his death."

"That they sued out a writ of ad quod dammun, in order to dock the intail of the said lands, and an inquisition being found thereupon, they, by deed of bargain and sale, conveyed the said land to T. Dade, who afterwards re-conveyed the same in fee simple;" which writ, inquisition and deed are found.

117 "That there were other intailed lands adjoining, not included in the inquisition; that no lines were shown to the jurors or surveyed in their presence—no consideration paid by the said Dade and that the inquisition was fraudulent."

"That an Act of Assembly was passed and obtained the Royal assent, for docking the intail of Gerard's part of the said land, which was an undivided moiety of the lands in question; that no partition of the said lands was ever made between the said John and Gerard or any claiming under them."

"That John being so seized and possessed, did in his lifetime give to his son Charles his undivided moiety to the said land, and delivered him the possession thereof. That he died in 1764, leaving issue six sons, of whom the said Charles (lessor of the plaintiff) was the

eldest, and by his will made the 16th of October, 1763, devised to his said son, Charles, the lands in question by the following clause: "Also I give to my son, Charles, all things already given him, which he now has in possession.

"That the said testator, John, in his lifetime, conveyed to plaintiff's lessor so much of the land in question as lies to the westward of four-mile-run, laid down in the survey annexed."

They also find the Act of Assembly for setting the titles and bounds of land.

They find a grant to Robertson from the proprietor of the Northern Neck, bearing date the 3d of March, 1730, the bounds of which they ascertain by reference to the survey, and is the land in question.

"That Robertson possessed the said land from the year 1733, to the year 1743, when an ejectment was served by John Alex-
118 ander, for so much of the land as was included in the Howsen's patent, and he recovered a judgment in 1751, till which time Robertson continued in possession."

"That James Robertson recovered from Robert Alexander, and was put in possession of the lands contained within his grant by writ of possession in 1765."

"That Robertson died in 1768, leaving issue a daughter, Jenet wife of Birch, the defendant, to whom, Robertson, by his will, devised the land contained within his patent."

"That the land in question is included within the Howsen and Robertson's grants, and if &c."

The District Court gave judgment for the plaintiff from which the defendant appealed.

The PRESIDENT.—Many objections have been made at the Bar to the insufficiency of this verdict. The first is, that the Crown is not found to have been seized of the land in question, at the time of the grant to Howsen. According to the feudal system, the King was seized of all the lands in Virginia, as Chief Magistrate; and, whatever may have been the practice in England, *seizin in the Crown* is never found in this country, because that is the ultimate point, beyond which a party in tracing his title is not bound to go.

It was next contended, that by the patent to Howsen, only an estate for life passed, there being in it, no words of inheritance. That, for want of a seal to the patent, this grant was not embraced by the confirmation act of 1748, and of course, that the prior grant of the Crown, in 1668, to the proprietor of the Northern Neck, had deprived the Crown of a right to make this grant to Howsen.
119 That the assignment from Howsen to Alexander "of all the land contained in *this patent*," not appearing to have been endorsed on the patent, did not pass the land in question.—These and other objections were strongly insisted upon by the appellant's counsel, and though they might all of them be controverted, yet they may be all safely admitted in this case, and then how will the cause stand? In 1669 John Alexander entered and was possessed as the law requires. Not having title, he was a disseisor upon the proprietor of the Northern Neck, in whom the title was. The succession from

him is continued regularly down, and each successor is found to have been seized and possessed as the law requires, and no entry of the proprietor's is stated, or claimed by them to the land, till the grant to Robertson in 1730. So, that there is a clear seizin and possession of 61 years found under the disseisor, without any entry in the meantime to purge the disseisin. Here is a term, not only sufficient to give a title in ejectment, but to bar a writ of right, which alone would admit an inquiry into the mere right.

The counsel for the appellant observed that the possession was not so found as to give a title; not being found to have been uninterrupted. But the ancestors of the appellee being stated to have been successively seized and possessed from 1669 to 1730, and no interruption found, their own maxim "that what appears not, is to be taken as not having existed," fixes the adverse possession to have been uninterrupted.

The justice of the maxim, *nullum tempus occurrit regi*
120 has been questioned, or rather the application of it to a case like this, where it is resorted to, to support a new grant to one citizen, to the prejudice of an antient grantee and possessor, for some defect in his grant. But that either the reason of the rule extends, or that the rule itself was ever applied to preserve the title of a lord, we do not admit; and believe the appellant's counsel was misinformed, as to the point having been otherwise decided in the old General Court.

On this point, therefore, we affirm the judgment, without deciding on the other points. And we are happy in believing, that in establishing this ancient possession we accord with the spirit if not with the letter of the several laws passed since the year 1710, for the protection of such possession, against attacks on the ground of legal defects.

Judgment affirmed.

Memo.

All the papers and records in the suit of Alexander vs. Birch and all the conveyances and wills referred to in the special verdict of the jury were destroyed during the Civil War and no record or trace of them can be found, except that which is contained in the report of the case last before mentioned, first Washington's Virginia reports, page 34, Court of Appeals of Virginia.

(*h*) *Abstract of Wills, Conveyances, Proceedings and Other Evidences of Title of the Defendant.*

(1) John Alexander, by his last will and testament, dated May 1st, 1775, recorded in the County Court of Stafford, Virginia, did among other things devise as follows:

Item. I give and devise unto my son, William Thornton Alexander, all the lands which I hold in the County of Fairfax,

together with all the slaves and stock which shall be on the said lands at the time of my death, to hold to him, my said son, and his heirs forever, and if my executors hereinafter ned shall at any time during the minority of my said son, Wil- m T. Alexander, think it conducive to his interest and benefit to ke leases in fee simple of the whole or of any part of the tract of d in the County of Fairfax, to him, my said son, in this will ised reserving ground rent. I do hereby authorize and empower d intrust my said executors and the survivors of them, to lay off h and so many lots out of the said tract of land in Fairfax unty, and contiguous to the town of Alexandria, as they or the vivor or survivors of them shall think proper, and the said lots lease out in fee simple to whosoever they shall or can agree with the same by any proper conveyance reserving to the said William Alexander and his heirs, the most considerable annual ground nt and beneficial covenants that said executors or the survivor or rvivors can procure. William Alexander and William Gibbons uart were the surviving executors.

Memo.

The record of this will was destroyed during the Civil War, and e facts above stated are to be found in the recitals contained in the cient deeds relating to the Alexander property located in and out Alexandria City.

(9) April 1, 1785. Deed Book B, 107.

m. Alexander & Wm. Gibbons Stuart, Surviving Executors of John Alexander, Deceased,

to

John Harper.

Conveys lot beginning upon the east side of Water Street 176 feet 7 inches south of the intersection of Water and Gibbon 22 Streets, and running thence eastwardly parallel to Gibbon Street into the Potomack River, thence returning to the ace of beginning, and running thence southerly with Water reet and binding thereupon 176 feet 7 inches to — Street; thence stwardly with the said street and binding thereupon 350 feet; ence southerly with a line parallel to Water Street 25 feet; thence sterly into the Potomack River; thence northerly with the river otomack until the first mentioned line is intersected; subject to a nt of 228 pounds Virginia money, payable Nov. 1 annually, to Vm. Thornton Alexander, his heirs and assigns.

(3) September 21st, 1789. Deed Book D, 63.

Wm. Thornton Alexander

to

John Harper.

By this deed John Harper re-conveys to Alexander the property described in Paragraph 2, and Alexander releases and exonerates Harper from the rent of 228 pounds.

(4) September 23, 1789. Deed Book D, 54.

Wm. Thornton Alexander

to

John Harper.

Conveys lot upon the west side of Union Street 88 feet, 3½ inches north of Franklin Street; thence with Union north 88 123 feet 3½ inches; thence west parallel to Franklin St. 150 ft. to the center of Potomac street; thence south parallel to Union Street 88 ft. 3½ inches, and thence east in a straight line to the beginning, subject to an annual rent of 12 pounds, 10 shillings.

In this deed Wm. Thornton Alexander covenants, "that Union Street lying 300 feet to the eastward of Water Street, upon the made ground of the lot first mentioned, (viz. Paragraph 2) be continued from north to south through the said lot 50 feet wide." "And that Franklin another new street, running east and west in a direction parallel to Gibbon Street, and lying in the following manner, that is to say, from the west side of Union Street 353 feet, 2 inches, to the southward of Gibbon Street, and from the east side of Union Street 378 feet, 2 inches to the southward of Gibbon Street shall be continued and extended from the west side of Union Street 100 feet wide westwardly until it shall extend 123 feet, 5 inches beyond Washington Street, and from the east side of Union Street shall be extended eastwardly 50 feet wide until it reaches the Potomack River." These covenants are with the said John Harper, his heirs and assigns.

NOTE.—In all other deeds covenanting to lay off streets, they are declared to be for the use of the inhabitants of the town, but no such covenant is contained in the deed above, in relation to the extension of Union Street south nor of Franklin Street east of Union.

(5) September 23rd, 1789. Deed Book D, 4.

Wm. Thornton Alexander

to

John Harper.

124 Conveys a lot lying upon the east side of Union Street and north side of Franklin Street and beginning at the intersection of the said streets, and extending thence northwardly with Union Street 201 feet, 7 inches; thence eastwardly with a line parallel to Franklin Street 90 feet; thence southwardly with a line parallel to Union Street 201 feet, 7 inches to Franklin Street; thence with Franklin Street westwardly to the beginning, subject to an annual rent of 12 pounds, 10 shillings, and not to exceed 28 pounds, 10 shillings, payable Nov. 1 to said Alexander, his heirs and assigns. Together with all advantages and commodities whatsoever to said part of a lot belonging or in anywise appertaining.

(6) September 23rd, 1789. Deed Book D, 18.

Wm. Thornton Alexander

to

John Harper.

Conveys a lot beginning at a point in Madison Street 205 feet eastward of the eastern line of Union Street and 93 feet, 3½ in. to the southward of the south line of Franklin St. and extending thence southwardly with a line parallel to Union St. 46 ft., 7¾ in.; thence eastwardly with a line parallel to Franklin St. into the River Potomack, (thence returning to the place of beginning), and extending from thence eastwardly with a line parallel to Franklin St. into the River Potomack; thence with a line parallel to Union Street southwardly, until the same shall intersect the second line, with all advantages and commodities &c. Subject to an annual rent payable Nov. 1, of 6 pounds, 5 shillings, and not to exceed 12 pounds, 15 shillings.

125 (7) September 23rd, 1789. Deed Book D, 24.

Wm. Thornton Alexander

to

John Harper.

Conveys lots beginning upon the south side of Franklin St. 90 ft. to the eastward of Union St. and running thence eastwardly with Franklin St. 115 ft. to the center of Madison St.; thence southwardly with a line parallel to Union St. 93 ft., 3½ in.; thence westwardly with a line parallel to Franklin St. 115 ft.; thence northwardly with a line parallel to Union St. 93 ft., 3½ in. to the beginning, with all

advantages and commodities &c., subject to an annual rent, payable Nov. 1, of 6 pounds, 5 shillings, and not to exceed 12 pounds, 5 shillings.

(8) September 23rd, 1789. Deed Book D, 47.

Wm. Thornton Alexander

to

John Harper.

Conveys lot beginning at a point in Madison St. 205 ft. to the eastward of the eastern line of Union St. and 93 ft., 3½ in. to the northward of the northern line of Franklin St. and running thence northward with a line parallel to Union St. 108 ft., 3½ in.; thence eastwardly with a line parallel to Franklin St. into the River Potomack, (return to the place of beginning), and extending from thence with another line parallel to Franklin Street, eastwardly into the River Potomack; thence northwardly with a line parallel to Union Street till it intersects the second line, with all advantages and commodities etc. Subject to an annual rent payable Nov. 1st of 12 pounds, 10 shillings and not to exceed 28 pounds, 10 shil-
126 lings.

(9) September 28, 1797. Deed Book L, 151.

Wm. T. Alexander and Wife

to

James Keith.

Lot beginning upon the north side of Franklin Street 90′ to the eastward of Union Street and running thence eastwardly with Franklin Street 115′ to the centre of Madison Street; thence northwardly with a line parallel to Union St., 201 ft. 7 in.; thence westwardly with a line parallel with Frankin Street 115′; thence with a straight line to the beginning. And all houses, streets, lanes, etc. Subject to an annual rent payable Nov. 1 of 9 pounds, 3 shillings, 4 pence, payable to said Alexander, his heirs and assigns.

(10) September 28th, 1797. Deed Book L, 155.

Wm. T. Alexander and Wife

to

James Keith.

Conveys lot beginning upon the north side of Franklin St. 205 ft. to the eastward of the east line of Union Street and extending from thence Eastwardly with Franklin Street into the River Potomac, and returning from thence again to the place of beginning, and running

ience northwardly with a line parallel to Union Street 93 ft., 3½
n. thence eastwardly with a line parallel to Franklin St. into the
iver Potomack; thence with a line parallel to Union St., southwardly
ll it intersects the line of Franklin St., and all houses, buildings,
streets, lanes, etc. Subject to an annual rent payable Nov. 1
27 of 9 pounds, 3 shillings, 4 pence.

(11) Sept. 28, 1797. Deed Book L, 164.

Wm. T. Alexander and Wife

to

James Keith.

Conveys a lot beginning at a point 205 feet to the eastward of Union St. and 139 feet 11¼ inches to the southward of the south line of Franklin Street, and running thence southwardly with a line parallel to Union St. 61 feet 7¾ inches; thence eastwardly with a line parallel to Franklin Street into the river Potomack, then returning again to the place of beginning, and running thence eastwardly into the river Potomack; thence southwardly with a line parallel to Union St. until it intersects the second line. And all houses, buildings, streets, lanes etc. Subject to an annual rent payable Nov. 1 of 4 pounds, 11 shillings, 8 pence.

(12) Sept. 28, 1797. Deed Book L, 322.

Wm. T. Alexander and Wife

to

James Keith.

Conveys lot beginning at the intersection of the south side of Franklin St. with the east side of Union St., and running thence southwardly with Union Street 93 feet 3½ inches; thence eastwardly with a line parallel to Franklin St. 90 feet; thence northwardly, with a line parallel to Union St. 93 feet 3½ inches to Franklin St; thence with that street westwardly to the beginning, and all buidings, houses, streets, lanes, etc.

Subject to an annual rent payable Nov. 1 of 4 pounds, 11 shillings, 8 pence.

128 (13) June 22, 1801. Deed Book B, 369.

Wm. Thornton Alexander and Wife

to

Alexander Seymour Hooe.

Conveys all the rents payable in the months of January, February, April, May, October and December, upon lots in Alexandria to said

Alexander, and also all the rents in said Town at the above date, payable in November by James Keith and William Hartshorne.

(14) Sept. 7, 1798. Deed Book L, 117.

John Harper

to

James Keith.

Conveys lot beginning upon the east side of Madison St. 93 feet 3½ inches to the northward of Franklin St., and thence north with Madison Street 7 feet 6 inches; thence east parallel to Franklin St. into the River Potomack; thence south parallel to Union St. 7 feet 6 inches and thence with a straight line to the beginning.

(15) July 15, 1805. Deed Book L, 8.

Wm. Thornton Alexander and Wife

to

Levin Powell.

Conveys a lot beginning at a point 90 feet to the eastward of the east line of Union Street and 93 feet 3½ inches to the southward of the south line of Franklin St. and extending thence southwardly with a line parallel to Union St. 108 feet 3½ inches; thence eastwardly with a line parallel to Franklin St. 115 feet to the center of Madison Street; thence northwardly with a line parallel to
129 Union St. 108 feet 3½ inches; thence westwardly with a line parallel to Franklin St. to the beginning. Also a lot beginning upon the south side of Franklin St. 205 feet to the eastward of the eastern line of Union St. and running thence eastwardly with Franklin St. 70 feet; thence southwardly with a line parallel to Union St. 93 feet 3½ inches; thence westwardly with a line parallel to Franklin St. 70 feet, 3 inches; thence northwardly with a line parallel to Union Street to the beginning, with all houses, etc., streets, lanes and *allies* to said lots belonging, etc. (wife did not sign).

(16) Feb. 22, 1806. Deed Book L, 458.

Wm. Thornton Alexander and Wife

to

Alexander Seymour Hooe.

Among other things conveys the rents reserved upon lots conveyed to James Keith and referred to in paragraphs 9, 10, 11, and 12, and before conveyed by deed referred to in paragraph 13.

(17) May 2nd, 1806. Deed Book L, 539.

Wm. T. Alexander

to

Stephen Winchester.

Conveys the several lots of ground and parcels of land and the reversion or fee rents of the same of which the said Alexander is seized or possessed in freehold or leasehold in the Town and County of Alexandria, included and comprehended within the following boundaries: Beginning at the intersection of Fayette and King Streets, thence along Fayette St. to Hunting Creek; thence down the several meanders of Hunting Creek to the River Poto-
130 mack; thence up the several meanders of the said river to King Street, and thence up King Street to the beginning, subject to such lease or leases as may have been made, etc., by said Alexander.

(18) Sept. 26th, 1798. Deed Book L, 121.

John Harper

with

James Keith.

Recites that the said Harper and Keith are severally seized of that piece of wharf or made ground in the Town of Alexandria lying upon the east side of Union St. and north side of Franklin Street, and extending from thence into the River Potomac, and covenant, grant and agree to and with each other and to and with the heirs of each other that they will lay off through their respective pieces of ground 180 feet to the eastward of Union Street and parallel to it, a street 50 feet wide, and that they will in like manner through their respective pieces of ground lying between Union and the said new street, an alley 12 ft. wide, commencing upon Union St. 80 ft. to the northward of Franklin St. and extending from thence, of that breadth, in a direction parallel to Franklin St., until it intersects the said new street and one other alley upon the north side of the aforesaid alley, of the breadth of 20 ft. commencing at the distance of 80 ft. from each of said streets, Union and the aforesaid new street, and that they will extend the same that breadth in a direction parallel to the said streets, across their respective pieces of ground; and that they, their heirs and assigns will at no time forever hereafter, in any manner or way whatsoever stop up, obstruct or interrupt the passage of said street or alleys, or any of them, and
131 that they shall forever remain and be free and open for the use and benefit of them, their heirs and assigns, and all other persons whatsoever.

(19) April 10th, 1807. Deed Book S, 88.

Wm. Thornton Alexander and Wife

to

John Taliaferro.

Recites that Robert Alexander conveyed in fee simple to Philip Alexander 500 acres of land lying on Hunting Creek in the County of Fairfax, Va., in Margaret Brent's patent, and that the said Philip Alexander devised the same to his son, John Alexander, who devised to the said Wm. Thornton Alexander all the right which he at the time of his death held in the said 500 acres in either freehold or leasehold, and that the said Wm. Thornton Alexander has disposed of a considerable portion of said 500 acres in fee simple and on ground rent forever, and being desirous to sell and convey unto said Taliaferro the whole of the unsold part of said land and to assign him all the rents that he, the said Alexander, at that time could legally convey, &c. And conveys the whole of the residue of said 500 acres and the several lots by him leased and the reversion and fee rents of same of which he, the said Alexander, was then possessed in fee, or in leasehold in the Town of Alexandria. (Deed not signed by wife, but acknowledged by her.)

(20) Oct. 14th, 1806. Deed Book S, 95.

Wm. T. Alexander and Wife and Stephen Winchester and Wife

to

John Taliaferro.

132 Conveys the several lots of ground and parcels of land and the reversion or fee rents of the same of which said Alexander and wife and Winchester and wife, were seized in fee hold or leasehold in the Town and County of Alexandria and County of Fairfax included and comprehended in the following boundaries, viz: Beginning at the intersection of Hunting Creek and the river Potomac, thence up Hunting Creek with the meanders thereof to West's line; thence northwardly with the West's line to Cameron Street; thence eastwardly with Cameron Street to the river Potomac; thence southerly with the several meanders thereof to the beginning.

(21) Feb. 15th, 1819. Liber 1, No. 2, Page. 1.

John Taliaferro and Wife

to

Charles Simms.

Conveys lots on Keith's Wharf,—one lot of 93 feet 3½ in. by 90 ft. bounded by Union Street on the west, James Keith's lot on the north and a lot granted to Levin Powell on the east; and one other lot bounded by Franklin St. on the north, lot granted to Levin Powell on the west, a lot granted to John Harper on the south and by the Potomac river on the east.
(Wife does not sign deed.)

(22) Sept. —, 1847. Liber 1, No. 3, Page 444.

Wm. Veitch, Mayor of Alexandria,

to

Richard B. Lloyd.

Conveys a lot of ground beginning on the east side of
133 Union Street at the distance of 186 feet 6½ inches southerly of Franklin Street, which is here only 50 feet wide, and running southerly 15 feet more or less; to the line of the lot conveyed by W. T. Alexander to Jacob Hoffman; thence easterly parallel to Franklin Street 90 feet; thence northerly parallel to Union Street the length of the first line, and then westerly with a straight line to the beginning, which said lot was under Act of Congress approved May 13th, 1826, sold at public auction as the property of John Taliaferro by Reuben Johnston, Clerk of the common council of Alexandria, to pay arrears of taxes then due thereon to said Common Council, which said sale was made May 24, 1845, conformably with said Act of Congress, after three months' notice of the time, place and terms of sale, by advertisement in the Alexandria Gazette.

(23) June 6th, 1797. Recorded Will Book B, Folio 25.

John Harper, by his last will and testament devises to John Harper, his heirs and assigns, a lot beginning upon the east side of Madison Street 93 feet 3½ inches north of Franklin Street, the same being the dividing line between Keith and Harper, thence northwardly with Madison Street 46 feet 7¾ inches; thence eastwardly with a line parallel to Franklin Street 120 feet more or less, to the river Potomack, crossing an alley or landing place 30 feet wide, stipulated to be forever kept open and which he orders and directs to be kept open the whole extent of the ground hereby devised; thence southwardly with a line parallel with Madison Street, to the line of James Keith and thence with that line to the beginning. If said

John Harper died before 21 years of age and without issue, then t
James Harper, his heirs and assigns.
134 If said James should die under 21 years and without issue
then to Robert Harper, his heirs and assigns. If said Rober
should die under 21 years and without issue, then Joshua Riddl
Harper and his daughters Sophia and Nancey, the survivor or sur
vivors at the death of said John, James and Robert.

Also devises to James Harper, his heirs and assigns, a lot begin
ning upon the east side of Madison St. 139 ft. 11½ in. north o
Franklin Street being the northern line of the lot devised to his so
John Harper, and running thence northwardly with Madison S
61 ft. 7¾ in. to the north line of the wharf and made ground, cros
ing a fifteen foot alley stipulated to be kept open, thence eastwardl
with the line of said wharf 120 feet more or less, to the river Potoma
crossing a 30′ foot alley or landing place in like manner stipulate
to be kept open, both of which pieces of ground the one of 15 ft. an
the other of 30 feet he directed to be forever kept open, as far as th
same extend with the piece of ground hereby devised for the pu
poses of an alley or landing place, thence southwardly with th
river to the line of the ground devised to his son John; thence wit
that line to the beginning. If said James should die under 21 yea
and without issue, then unto his son John, his heirs and assigns.
said John should die in like manner, then unto his son Joshu
Riddle. If he died in like manner, then to his son Robert, an
daughters Sophia and Nancey, and the survivor or survivors of the
their heirs and assigns, at the time of the death of James, John an
Joshua. Also devises unto his sons John and James, their heirs an
assigns, and in case of the death of either or both of them under 2
years and without issue, then to the person or persons
135 whom the separate parcels of the said ground are limited i
such event, and to the heirs and assigns of such persons, th
privilege of extending a pier into the river Potomac, and whenev
the said pier is run out and framed to prevent its being done in suc
manner as not to answer the ends and interests of the owner
owners and to prevent infringing upon the rights of those intereste
with him in the wharf of which the said piece of ground is a par
he orders and directs that the northern line of said Pier be laid
the distance of 28 feet from the northern end of the said wharf,
extend eastwardly into the river in a direction parallel to Frankli
Street whatever distance judged proper, and southwardly towar
Franklin Street 50 feet.

Also devises to Nancy Harper a lot beginning at the intersectio
of the north side of Franklin with the east side of Union Stree
thence northwardly with Union Street 201 feet 7 inches to the bac
or northern line of my ground; thence eastwardly with that li
and parallel to Franklin Street 90 feet to the line of James Keit
thence southwardly with his line 201 feet 7 inches to Frankl
Street, and thence with that street to the beginning. If she d
under 21 years and without issue then to his son Joshua Riddle, h
heirs, etc. If he die in like manner, then to his daughter Sophi
if she die in like manner, then to his sons Robert, John and Jame

their heirs and the survivor or survivors at the time of the death of said Nancy, Joshua and Sophia.

He authorizes his executors to sell any of his real estate not otherwise disposed of to pay his debts, and appoints Mary Harper, Executrix, and Wm. Herbert, Samuel Craig, Benj. Shreve, John
136 Dunlap and Wm. Hartshorne, Executors, and letters testamentary were granted unto Mary Harper, Wm. Herbert, Samuel Craig, John Dunlap and Wm. Hartshorne, surviving &c.

(24) May 24th, 1798. Liber K, No. 2, Page 575.

John Harper

to

Wm. Harper.

Conveys a lot beginning upon the east side of a street called Madison 93 feet 3½ inches to the southward of Franklin Street, and running thence southwardly with Madison Street and binding therewith 46 feet 7¼ inches to the line of James Keith; thence with that line and parallel with Franklin Street into the River Potomack, crossing a landing place 30 feet wide, covenanted by the proprietors of the said wharf to be kept forever open as a passage along the front of the wharf and a landing place; thence northwardly with a line parallel to Madison and Union Streets 46 feet 7¾ inches; and thence westwardly with a straight line to the beginning. Also one other lot lying upon the west side of Madison Street and south side of Franklin Street and bounded as follows: Beginning at the intersection of said streets and running thence southwardly with Madison Street and binding therewith 93 feet 3½ inches; thence westwardly with a line parallel to Franklin Street 90 feet to the line of James Keith; thence northwardly with a line parallel to Madison and Union Streets and with the line of said James Keith 93 feet 3½ inches to Franklin Street; thence eastwardly with Franklin Street and binding therewith 90 feet to the beginning. In trust, for the use of said Wm. Harper until John Harper, Junior (grandson of said John Harper) becomes of age, then in trust to
137 convey the same unto the said John Harper, Junior, his heirs and assigns, and if said John, Junior, die under 21 years and without issue, then in trust until Wm. Harper, Junior (grandson of said John) shall arrive at 21 years when he shall convey the same to the said Wm. Harper, Junior.

(25) Nov. 3rd, 1798. Deed Book L, 219.

John Harper

to

John C. Vowell and Thomas Vowell, Jr.

Conveys a lot upon the east side of a street heretofore called Madison Street and to the northward of Franklin Street. Beginning upon Madison St. 100 feet 5½ inches to the northward of Franklin Street upon the line of James Keith, and running thence eastwardly with his line and parallel to Franklin Street into the river Potomac, thence northwardly with a line parallel to the said street called Madison St., 50 ft. 4¾ in. thence westwardly and parallel to Franklin St., to the aforesaid St. called Madison thence southwardly with that street and binding thereon 50 feet 4¾ inches to the beginning.

(26) Nov. 3rd, 1791. Deed Book T, 466. Fairfax Co., Va. Records.

Wm. Thornton Alexander and Wife

to

John Harper.

Releases rents upon lots referred to in paragraphs 5, 6, 7 and 8.

138 (27) March 24th, 1802. Deed Book B, 364.

John Harper

to

William Harper.

Conveys a lot on the east side of Madison 151 feet 2¼ inches to the northward of Franklin Street, and at the north line of the lot conveyed by John Harper to John C. and Thomas Vowell, and running thence eastwardly with Vowell's line into the river Potomac, thence northwardly parallel to the said street now called Madison 50 feet 4¾ inches; thence westwardly with a line parallel to the first line of the same length to the said street now called Madison; thence with that street and binding therewith southwardly 50 feet 4¾ inches to the beginning.

(28) July 16th, 1803. Deed Book F, 131.

Wm. Harper

to

John Harper, Junior.

Conveys two lots referred to in paragraph 24.

(29) July 12th, 1803. Deed Book 1, 179.

Wm. Harper and Wife

to

John Gardiner Ladd.

Conveys lot referred to in paragraph 27.

(30) Oct. 8, 1818. Will Book 2, Folio 278.

John Gardiner Ladd, by his last will and testament, devises
139 lot referred to in paragraph 29 to his son Joseph Ladd, after he shall become of full age, the use and benefit thereof until he arrive at 25 years, and after that age (if he live) to him and his heirs forever. If he should die before 25 years of age and without lawful issue, then to vest in and be equally divided among his daughter Sarah, his brother Wm. Ladd, and his nephews John H. and Wm. G. Ladd, and their heirs.

(31) May 7th, 1825. Liber O, No. 2, page 403.

Joseph B. Ladd and Others

to

John Hooff.

Conveys among other things the lot referred to in paragraph 30 in trust to secure the Farmers Bank of Alexandria $13,341.81 &c.

(32) Dec. 4, 1834. Liber V, No. 2, page 286.

John Hooff, Trustee, Jos. B. Ladd and Jno. H. Ladd and Wife

to

Wm. H. Irwin.

Releases and conveys lot referred to in paragraph 31, (in this deed the north line of the lot, is described as running eastwardly 124

feet more or less, into the Potomac River, and Madison Street is designated Strand Street).

(33) April 28th, 1842. Liber C, No. 3, page 348.

Wm. H. Irwin and Wife

to

Hugh Smith, Phineas Janney, and Hugh C. Smith, Executors of Chas. Bennett.

Conveys lot referred to in paragraph 32.

140 (34) May 22nd, 1848. Liber A, No. 4, page 69.

Hugh Smith, Phineas Janney, and Hugh C. Smith, Executors of Chas. Bennett

to

The Alexandria Marine Railway Co.

Conveys lot referred to in paragraph 33 by following boundaries:—Beginning on the east side of a street 50 feet wide (laid out by James Keith and John Harper, parallel to and distant 108 feet east of Union Street) 151 feet 2¼ inches north of Franklin Street and running northerly with that street 50 feet 4¾ inches; thence easterly parallel to Franklin Street into the Potomac River; then returning to the point of beginning and running thence easterly parallel to Franklin Street, into the river Potomac, then northerly to connect with the second line, with all rights of way, &c.

(35) May 5th, 1812. Deed Book W, page 1.

John C. Vowell and Wife

to

Thos. Vowell and Wife.

Partition Deed.

Assigns to Thos. Vowell in severalty lot referred to in paragraph 25.

(36) July 13th, 1827. Liber Q, No. 2, page 195.

Thos. Vowell and Wife

to

John Douglas.

Conveys lot referred to in paragraph 35 in trust for the benefit of creditors, and described as a lot on Keith's wharf in the

said Town 50 feet in front on the river and extending back from the river 90 feet more or less, lying between the warehouse belonging to the heirs of Jno. G. Ladd and the Tobacco warehouse.

(37) July —, 1829. Liber R, No. 2, page 451.

John Douglas, Trustee,

to

John C. Vowell.

Conveys lot referred to in paragraph No. 36.

(38) April 13th, 1849. Liber K, No. 3, page 441.

John C. Vowell

to

Boyd Smith, Richard C. Smith, Stephen Shinn, Edward Dainfield, Nathaniel Goodhand, Jno. T. Johnson, and Joseph P. Grimes, with such other persons as have been or may be associated with them, constituting "The Alexandria Marine Railway Company."

Conveys lot referred to in paragraph 37.

(39) Jan. 10th, 1870. Liber A, No. 4, page 71.

The Alexandria Marine Railway Co.

to

ge C. Johnson, Elmyra E. Goodhand, and Wm. N. Goodhand.

Conveys lots referred to in paragraphs 34 and 38 and described as follows: All that lot of ground lying and being in the City of Alexandria, Va., on the east side of Strand, formerly Madison Street, which is 50 feet wide and was laid out by James Keith and John Piper, and is parallel to and distant 150 feet east of Union Street, at a point 100 feet 9½ inches north of Franklin Street, and running thence north along said Strand Street, 100 feet 9½ inches, and thence east parallel to Franklin Street into the Potomac River, thence south parallel to said Strand Street 100 feet inches, and thence west parallel to Franklin Street to the beginning, together with the Marine Railway and other improvements thereon, all machinery, boilers, engines, tools and implements of said company. Said sale was made pursuant to a resolution adopted at a general meeting of the stockholders of said company, held in Alexandria June 21, 1869, the said resolution being unanimously adopted by those present, who represented a majority of the stock

of said Company, said meeting being held pursuant to a call of the Board of Directors, published for thirty days in the Alexandria Gazette.

(40) Jan. 10, 1870. Liber A, No. 4, page 72.

Katie G. Johnson, Elmira E. & Wm. N. Goodhand

to

D. L. Smoot.

Conveys the property referred to in paragraph 39 in trust to secure "The Alexandria Marine Railway Co. the payment of three bonds, dated January 10, 1870, for $1572.21 each, and payable at 8, 12 and 18 months respectively, with interest. Released by deed referred to in paragraph 92.

(41) April 20th, 1874. Deed Book No. 4, page 61.

Katie G. Johnston, Elmira E. Goodhand and Wm. N. Goodhand

to

The Alex. Marine Railway and Shipbuilding Co.

143 Conveys property referred to in paragraph 40. The Alexandria Marine Railway and Shipbuilding Company assuming the debt secured by deed referred to in paragraph 40, and a further lien is reserved upon the said property to secure five negotiable notes of the A. M. R. & S. B. Co. bearing even date with this deed and payable to the order of Katie G. Johnston and Elmira E. Goodhand, four for $500, each and payable 2, 4, 6 and 9 months after date, and the last for $581.78 payable 11 months after date, with interest from date.

MEMO—Released by deed referred to in paragraph 90.

(42) July 25th, 1843. Liber D. No. 3, page 367.

Wells Andrews and Nancy, His Wife (Formerly Nancy Harper and Daughter of Jno. Harper)

to

Robert Jamieson.

See Will of John Harper, Paragraph 23.

Conveys lots referred to in paragraph 23 and described as two lots in above deed, one beginning at the intersection of Franklin and Union Streets as laid out on the plat of Keith's wharf, thence running northwardly with Union Street, 80 feet to a 12 foot alley, thence with said alley eastwardly 70 feet to a 20 foot alley;

nce southwardly with said alley 80 feet to Franklin Street, nce westwardly with Franklin Street 70 feet to the beginning, the other lot of ground beginning on Union Street, at the rsection of said street, with the 12 foot alley above referred thence northwardly with said street, 109 feet 7 inches; thence swardly 70 feet to the said 20 foot alley, thence southwardly with alley, 109 feet 7 inches to said 12 foot alley, thence with said foot alley westwardly 70 feet to the beginning, with all improve-nts and rights of way.

(43) April 24th, 1847. Liber H, No. 3, Page 326.

Robert Jamieson

to

Andrew Jamieson.

Conveys lots referred to in paragraph 42.

(44) May 18, 1874. Deed Book No. 4, page 172.

Andrew Jamieson and Wife

to

The Alexandria Marine Railway & Shipbuilding Co.

Conveys lots referred to in paragraph 43.

(45) Sept. 27th, 1824. Liber O, No. 2, page 143.

John Harper and Wife

to

James H. Veitch.

Conveys the two lots referred to in paragraph 28.

(46) Feb. 1st, 1834. Liber U. No. 2, page 714.

James H. Veitch

to

Josiah H. Davis.

Conveys one of the lots referred to in paragraph 45 and bounded follows: Beginning upon Strand Street 93 feet 3½ inches to e southward of Franklin Street, and running thence south-rdly with Strand Street and binding therewith, 46 feet 7¾ ches; to the line of James Keith, thence with that line eastwardly

into the River Potomac, crossing a landing 30 feet wide,
145 covenanted by the proprietors of the wharf of which the premises were a part, to be left forever open as a passage along the front of the wharf and landing place; thence northwardly with a line parallel to Strand Street 46 feet 7¾ inches; thence westwardly with a straight line to the beginning. This deed was executed by Wm. Veitch, Atty. in fact for Jas. H. Veitch. (See power recorded Liber U, No. 2, page 712.)

(47) Aug. 3rd, 1872.

Pursuant to a decree rendered in the Chancery cause of Veitch vs. Veitch, rendered at the June term 1872 by the Corporation Court of the City of Alexandria, Albert Stuart, Commissioner of Sale, sold a lot described in the report of Commissioner Chilton filed in said cause, as a lot on Franklin Street, near the Strand, of which Wm. Veitch died, siezed, to Jno. A. and George L. Seaton for $250.00. Which was confirmed by decree August 13, 1872. By report of A. Stuart, Commissioner, of April 24, 1847, it appears that the whole purchase money was paid and by decree of same date he is directed to execute deed to said Seatons for said lot. By report of Stuart, Commissioner, filed May 12, 1874, it appears that the share of Jno. A. Veitch was applied to judgment liens upon his interest in the estate of Wm. Veitch, and that the fund was distributed among parties entitled, and by decree of same date said Commissioner is discharged from further liability, and report confirmed. The lot above referred to is described in a plat and survey filed in said cause as follows: Beginning at A, the intersection of the south line of Franklin Street,
and the west line of the Strand 180 feet east of Union Street,
146 then south with the Strand and parallel to Union Street 93 feet 3½ inches to B; thence west parallel to Franklin 90 feet to C; thence north parallel to Union 93 feet 3½ inches to D; the south line of Franklin Street; thence with Franklin Street east 90 feet to the beginning. By the will of Wm. Veitch (a copy of which is filed in said cause) after certain specific devises to his wife for life he devises to his sons Silas, Wm. P., Eldridge R., Chas. W., J. McKendree, Daniel A., and John A., and to his granddaughter Mary Virginia Reynolds, in pro rata proportions all the residue of his estate real, personal and mixed. By the will of Eldridge R. Veitch (a copy of which is filed in said cause) all his estate, real, personal and mixed is devised to his wife Elizabeth M. Veitch to be by her used and invested at her discretion and for her benefit during her natural life, and whatever remains at her decease, to be equally divided among his three children, Sallie M. Wilberforce and Phoebe A. C. Veitch. I do not find any evidence of record as to how Wm. Veitch acquired title to said lot, but am informed by Mr. Albert Stuart, that he inherited it. I cannot find of record the deed from A. Stuart, Commissioner to Geo. L. and John A. Seaton.

(48) May 18, 1874. Deed Book 4, page 178.

Geo. L. Seaton and Wife and John A. Seaton

to

The Alexandria Marine Railway & Shipbuilding Co.

Conveys lot referred to in paragraph 47. This deed recites that e said lot was conveyed, by deed dated April 27th, 1874, to the id Geo. L. and Jno. A. Seaton.

(49) Sept. 29, 1827. Liber Q. No. 2, page 470.

17 Alexander Seymour Hooe

to

lizabeth C. Keith, Jno. C. Keith, James Keith, Margaret L. Keith Jane Ann C. Keith, Cath C. Keith, and Thos. R. Keith, Children and Devisees of James Keith.

Releases the ground rents upon the lots referred to in paragraphs 10, 11 and 12.

(50) May 16, 1856. Liber R, No. 3, page 92.

Anderson D. Keith and Catherine C. Keith, His Wife.

to

Wm. G. Keith.

Conveys all the interest of Catherine C. Keith in the real estate escended from her father James Keith, Jr., deceased, also her un-ivided interest in the portions of her two sisters Elizabeth C. Keith nd Jane A. C. Keith, which descended to them from said James Keith, and of which they died possessed, said property all being situated in the City of Alexandria.

(51) May 16, 1856. Liber R, No. 3, page 91.

Wm. G. Keith and Wife

to

Anderson D. Keith.

Conveys the property referred to in paragraph 50.

(52) Nov. 19, 1857. Liber S. No. 3, page 417.

Bladen Forest (Sub-Trustee under Will of James Keith, Jr.)

and

Thos. R. Keith and Others.

Partition deed of James Keith, Senior's estate. Allots to
148 Catherine, wife of Anderson D. Keith, a lot beginning on the east side of Strand or Madison Street 139 feet 11¼ inches south of Franklin Street, and running south with Strand or Madison Street 61 feet 7¾ inches; then east parallel to Franklin Street (crossing a landing place 30 feet wide to be kept open forever) into the Potomac River, then returning to the point of beginning, and running parallel to Franklin Street into the said River, then south to connect with the second line, with the right of way over Strand or Madison Street into Franklin Street. Also a lot beginning on the west side of Strand or Madison Street 92 feet north of Franklin Street and at the north line of an alley 12 feet wide, and running west with said alley, parallel to Franklin Street 80 feet to another alley 20 feet wide; then north with this alley and parallel to Strand Street 109 feet 7 inches; then east parallel to Franklin Street to Strand Street, then with Strand street to the beginning, with the use of said Street and both of said alleys.

(53) Aug. 1st, 1861. Liber V, No. 3, page 269.

Anderson D. Keith

to

Jno. R. and Mary E. Keith.

Conveys lots referred to in paragraph 52.

(54) May 23, 1874. Deed Book No. 4, page 182.

Wm. C. Yeaton and Reuben Johnston (Commissioners under a Decree of Circuit Court, Alexander Co., Rendered May 31st, 1869, in the Chancery Cause of Mary E. Keith vs. Thos. & Catherine Keith) and Mary E. Keith

to

The Alexandria Marine Railway & Shipbuilding Co.

149 Conveys an undivided half of lots referred to in paragraph 53, and Mary E. Keith releases her dower in same, (the first lot is conveyed subject to the opening of any streets and ways, which may be lawfully demanded) Lien reserved to secure three notes of $62.50 each. Lien released by deed referred to in paragraph 91.

(55) April 19, 1853. Liber O, No. 3, page 466.

Josiah H. Davis and Wife

to

Richard C. Smith.

Conveys lot referred to in paragraph 46.

(56) April 19, 1853. Liber O, No. 3, page 495.

Richards C. Smith

to

C. W. Wattles.

Conveys lot referred to in paragraph 55, in trust to secure the payment to Josiah H. Davis, of two bonds of $233.33 and $233.34. Released July 14, 1856. Liber R, No. 3, page 526.

(57) April 19, 1858. Liber T, No. 3, page 41.

Richards C. Smith

to

James P. Smith.

Conveys among other things, the lot referred to in paragraph 56 in trust to secure 1st, Isaac George, Exor. $3000, with interest, and to secure the Farmers Bank of Virginia the several sums of $1000 and $3250; then to Wm. Davis $1376.40 with interest; James P. Smith $518.49 with interest; Kate C. Smith $3000, Mary R.
150 Smith $3000 and Elizabeth Ann Smith $7600, with interest

(58) Nov. 9, 1860. Liber U, No. 3, page 602.

Richards C. Smith and Wife

to

James P. Smith.

Releases wife's dower in property conveyed by deed, paragraph 57.

(59) May 1, 1874. Deed Book No. 4, page 335.

Richards C. Smith, in His Own Right and as One — the Executors & Trustees of Hugh Smith, De'ed, and Elizabeth A. Smith, His Wife, Chas. W. Wattles, Trustee; James P. Smith, for Himeslf as Trustee and as Exor. & Trustee of Hugh Smith; L. N. Garwood, Admnr. d. b. n. of Henry Brown, Geo. Brown, Jno. P. Poss, and Harriet Poss, Legatees of Henry Brown; Wm. H. Marbury, Cashier of Farmers Bank of Va., and Wm. Davis

to

Alexandria Marine Railway & Shipbuilding Co.

Conveys lots referred to in paragraphs 56 and 57 (This does not release the trust in paragraph 57, as to the debts of Kate C. Smith, Mary R. Smith and Eliza Ann Smith, but upon reference to said trust it will be seen that their lien upon the property in this paragraph mentioned, was contingent upon the other property conveyed by said trust being insufficient to satisfy their claims, if there should be any surplus from the property herein referred to after paying debts herein released, it was liable for any insufficiency of their security.)

(60) Nov. 19, 1857. Liber S, No. 3, page 417.

151 Bladen Forrest, Sub-trustee under the Will of James Keith, Jr.,

and

Thos. R. Keith and Others.

Partition of the estate of James Keith, Sr. Allots to Bladen Forrest, Jr., lot beginning on the east side of Union Street with the south side of Franklin Street and running south with Union Street 93 feet 3½ inches; then east parallel to Franklin Street 90 feet; then North and parallel to Union Street, to Franklin Street; then west with Franklin Street to the beginning.

(61) July 11, 1846. Will Book No. 1, folio 115.

James Keith, Jr. by his last will and testament after sundry de-
ises of property personal and real out of Virginia, gives an an-
uity of $150 to each of his sisters Margaret Snowden Keith and
ane Ann Carter Keith, and to his sister Cath. C. Keith an an-
uity of $200 to commence at the death of her then husband, and
ll said annuities to continue during their respective lives. Sub-
ect to said charges, he devises the residue of his estate of every
escription to his brother, Thos. R. Keith in trust for the sole use
f Mary Helen Forrest, for and during the term of her natural
ife, and in remainder after her death, for her child or children or
er descendants alive at her death, his her or their respective heirs,
tc., provided further that if all the children and descendants of
aid Mary Helen surviving her shall die within the full age of 21
ears, and without issue, then on the death of the last survivor of
he said Mary Helen, her children and descendants, he devises all
he property given to said Mary Helen, unto his brother Thos. R.
Keith and sisters Margaret Snowden Keith and Jane Ann
52 Carter Keith, to be equally divided between them.

(62) Nov. 20, 1874. Deed Book No. 4, page 377.

Joseph Forrest (Comr. under a Decree of the Corporation Court Rendered Nov. 13, 1874, in the Chancery Cause of Forrest v. Forrest and Others) and Andrew Jamieson

to

The Alexandria Marine Railway & Shipbuilding Company.

Conveys lot referred to in paragraph 60. By the proceedings in this suit it appears that the annuitants, the said Thos. R. Keith, Margaret Snowden Keith and Jane Ann Carter Keith, are dead, and that Mary E. Keith, sole heir at law of said Thos. R. Keith, was a party to the suit; that Jos. Forrest was substituted Trustee under the will of James Keith, Jr., and gave bond with security in the sum of $400. Nov. 13, 1874 that said lot was sold by Jno. Hawxhurst et als., Comrs. for U. S. Direct Tax to said Andrew Jamieson (who releases his interest thus acquired by joining in this deed) March 14, 1864. See Tax Sale Certificate No. 120, Liber V, No. 3, page 541.

(63) Sept. 23, 1848. Liber K, No. 3, page 138.

Richard B. Lloyd and Wife

to

James Green.

Conveys lot referred to in paragraph 22.

(64) Nov. 19th, 1857. Liber S, No. 3, page 417.

Bladen Forrest, Sub-trustee,

with

Thomas R. Keith and Others.

Partition of James Keith, Senior's real estate. Allots to
153 Thos. R. Keith, being on the north side of Franklin Street, beginning at its intersection with the east line of the Street called Madison Street or Strand Street (50 feet wide) believed to be 230 feet east of Union Street, and running east with Franklin Street into the Potomac River; crossing a landing place 20 feet wide, to be kept open forever, then returning to the place of beginning and running north with Strand or Madison Street 100 feet 9½ inches; then east parallel to Franklin Street, crossing the said landing place into the Potomac River; then south to intersect the first line, with all rights of way and water.

(65) March 1st, 1864. Liber V, No. 3, page 538.

Jno. Hawxhurst et als., United States Direct Tax Com'n'rs,

to

Andrew Jamieson.

Sell and convey lot referred to in paragraph 61 as the property of Mary E. Keith, and which is redeemed by her, Dec. 21, 1865. See Redemption Certificate, Deed Book 3, page 263.

(66) July 4th, 1871. Deed Book 2, page 13.

Mary E. Keith

to

Jno. Hawxhurst.

Conveys lots referred to in paragraph 64. (This deed recites that upon the death of Thos. R. Keith intestate and without issue

escended to the said Mary Keith, his next of kin and only heir
law.)

154 (67) May 24th, 1872. Deed Book No. 3, page 166.

John Hawxhurst and Wife

to

James Green.

Conveys lot referred to in paragraph 66.

(68) Jan. 6th, 1875. Deed Book 4, page 440.

James Green and Wife

to

The Alex. Marine Railway & Shipbuilding Co.

Conveys lots referred to in paragraphs 63 and 67.

(69) Nov. 19th, 1857. Deed Book S, page 417.

Bladen Forrest, Sub-trustee,

with

Thos. R. Keith and Others.

Partition of estate of James Keith, Senior. Allots to Margaret L. Keith a lot beginning on the north side of Franklin Street 90 feet east of Union Street, and running east, with Franklin Street 90 feet to Strand Street or Madison Street, then north with Srand or Madison Street 80 feet to an alley 12 feet wide; then west with the alley and parallel to Franklin Street 90 feet, then by a straight line to the beginning, with the use of said alley and Strand Street.

(70) Dec. 29th, 1857. Liber S, No. 3, page 422.

Margaret L. Keith

to

Mary E. Keith.

155 Conveys lot referred to in paragraph 69.

(71) May 5th, 1874. Deed Book 7, Page 129.

Mary E. Keith

to

The Alex. Marine Railway & Shipbuilding Co.

Conveys lot referred to in paragraph 69 and undivided half
lots referred to in paragraph 54.

(72) Charles Simms' Will (Probated May 8, 1820) and Record
Will Book 2, Page 358.

Devises to his wife the use and profits of his estate real and p
sonal during widowhood, then to children and their heirs to
equally divided among them. By a codicil he authorizes the sale
all or any part of his real estate to pay his debts, and appoints
wife Cath. Simms, Executrix and Wm. Douglas Simms, Cuthb
Powell, and Jno. D. Simms, Exors. of his will.

(73) May 9, 1837. Liber W, No. 2, Page 413.

Cuthbert Powell, Admr. d. b. n. c. t. a. of Chas. Simms, Deceas

to

Israel P. Thompson.

Conveys lots referred to by paragraph 21, and described as follo
One lot beginning at a point on the south side of Franklin Str
where it strikes the Potomac River, thence with the tract of
wharf on the river southwardly 93 feet 3½ inches; thence westwar
parallel with Franklin Street 75 feet to the corner of the lot
longing to Cuthbert Powell, thence with a line parallel to Uni
Street 93 feet 3½ inches to Franklin Street; thence 75 feet to
beginning, the lines aforesaid including a landing place
156 the point of the wharf of 30 feet which by compact was
be common to the owner of the lot hereby conveyed, and
adjoining lot held by Cuthbert Powell. Also one other lot on
east side of Union Street, commencing at a point 93 feet 3½ inc
to the southward of Franklin Street, thence with Union Street
feet 3½ inches thence eastwardly with Franklin Street 90 fe
thence northwardly parallel with Union Street 108 feet 3½ inch
thence to the beginning, on Union Street 90 feet.

(74) May 10th, 1837. Liber W, No. 2, Page 426.

Israel P. Thompson

to

Cuthbert Powell.

Conveys lots referred to in paragraph 73.

(75) Oct. 13, 1820. Liber N, No. 2, Page 390.

Burr Powell, Acting Exor. of Levin Powell, De'ed,

to

Cuthbert Powell.

Conveys lots referred to in paragraph 15.

(76) Feb. 29, 1864. Liber V, No. 3, Page 603.

Jno. Hawxhurst et als., U. S. Direct Tax Comm'n'rs,

to

A. J. Russell & Jno. Y. Smith.

Conveys lot Potomac & Strand, assessed to C. L. Powell on the Land Book for 1860.

157 (77) Feb. 29, 1864. Liber V, No. 3, Page 604.

Jno. Hawxhurst et als., U. S. Direct Tax Comm'n'rs,

to

A. J. Russell and Jno. Y. Smith.

Conveys lot Strand, assessed to C. L. Powell on the Land Book 1860.

(78) March 1, 1864. Liber V, No. 3, Page 604.

Jno. Hawxhurst et als., U. S. Direct Tax Comm'n'rs,

to

A. J. Russell and Jno. Y. Smith.

Conveys lot Franklin, Union Street and river assessed to C. L. Powell, on the Land Book for the year 1860.

(79) May 15th, 1874. Deed Book 7, Page 127.

Chas. L. Powell

to

The Alex. Marine Railway & Shipbuilding Co.

Conveys three lots, viz: Described in the report of the Commissioners for the partition of the real estate of Cuthbert Powell, as follows; a lot on the east side of Union Street 93 feet 3½ inches south of Franklin Street; thence south with Union Street 93 feet 3½

inches; thence east and parallel with Franklin Street 90 feet thence north and parallel with Union Street 93 feet 3½ inches; thence with a straight line to the beginning. A lot on the west side of Strand Street 93 feet 3½ inches south of Franklin Street, thence south on Strand Street 108 feet 3½ inches; thence west and parallel with Franklin Street 90 feet; thence north and parallel with
158 Strand Street 108 feet 3½ inches; and thence east with a straight line to the beginning; and a lot on the east side of Strand Street and south side of Franklin Street, at their intersection, thence south with Strand Street 93 feet 3½ inches, thence east and parallel with Franklin Street 70 feet; thence north and parallel with Strand Street 93 feet 3½ inches to Franklin Street; and thence west with Franklin Street to the beginning.

(80) May 18, 1874. Deed Book 4, Page 136.

The Alex. Marine Railway & Shipbuilding Co.

to

D. L. Smoot.

Conveys lots referred to in paragraph 44 in trust to secure Andrew Jamieson, the payment of said Company's note for $300, bearing even date and payable twelve months after date to said Jamieson or order, with interest. Released by deed Liber 14, page 49.

(81) April 1st, 1878. Deed Book 9, Page 220.

The Alex. Marine Railway & Shipbuilding Co.

to

James H. Reid and Albert Stuart.

Conveys all that lot of ground with the buildings and improvements thereon, situated on the east side of Union Street and to the south of Gibbon Street, and now used as a shipyard by said company, together with all the machinery, wharves, railways, materials, timber and property of every kind thereon. In trust, to secure the following sums of money, viz: To the German
159 Banking Co. of Alex., Va., the payment of $13,500.00 evidenced by the notes of the said "Alex. Marine Railway & Shipbuilding Co." one for $3500, dated Dec. 6, 1877 and payable 3 months after date; one for $10,000.00 dated Feb. 1, 1878, and payable 4 months after date; to Jas. T. Rogers $2058.53, part of which is evidenced by the two notes of said Railway Co. in favor of said Rogers, dated April 3, 1876; one for $800 payable 3 months after date, and one for $800 payable 4 months after date, and the residue $402.59 by open account. To Justus Schneider $4000 evidenced by the note of said Railway Company in favor of said Schneider, dated Dec. 11, 1877, and payable 4 months after date,

be paid pro rata in event of a sale under this trust. Released deed referred to in paragraph 95.

(82) July 5, 1865. Liber W, No. 3, page 495.

Jno. Y. Smith and Wife

to

A. J. Russell.

Conveys his interest in lots referred to in paragraphs 74, 75 and 76.

(83) Dec. 29, 1865. Liber X, No. 3, page 42.

A. J. Russell and Wife

to

Thos. D. Hays.

Conveys half interest in lots referred to in paragraph 82.

(84) Jan. 19, 1866. Liber X, No. 3, page 256.

A. J. Russell and Wife

to

Lewis McKenzie.

Conveys undivided moiety of lots referred to in paragraph 83.

(85) Sept. 6, 1871. Deed Book 2, page 97.

Lewis McKenzie

to

Chas. L. Powell.

Quit claims his interest in lots referred to in paragraph 84.

(86) Jan. 25, 1866. Liber X, No. 3, page 271.

T. D. Hays and Wife

to

J. J. Moore.

Conveys interest in lots referred to in paragraph 85. No claim title has ever been made by grantee under this deed.

(87) Sept. 7, 1798. Deed Book L, page 117.

John Harper

to

James Keith.

Conveys lot beginning upon the east side of Madison Street 93 ft., 3½ in. to the northward of Franklin St., and thence north with Madison St. 7 ft. 6 in.; thence east parallel to Franklin St., into the River Potomack; thence south parallel to Union St., 7 ft., 6 in., and thence with a straight line to the beginning.

161 (88) January 21st, 1884. Deed Book No. 13, page 462.

Charles L. Powell

to

The Alex. Marine Railway & Shipbuilding Co.

Conveys lot of ground, in the City of Alexandria, beginning at a point on the south side of Franklin St. where it intersects the Potomack River, thence with the track of the Railway on the River, south 93 ft., 3½ in.; thence westwardly with Franklin St. 75 ft. to the corner of the lot formerly belonging to Cuthbert Powell; thence with a line parallel to Union St. 93 ft., 3½ in. to Franklin St.; and thence 75 ft. to the beginning, being one of the lots previously sold by the grantor to the grantee, and for which the purchase price had been paid but by error was omitted in the conveyance.

(89) April 8, 1882. Deed Book No. 14, page 44.

John B. Smoot, Admr. of Thos. A. Waters, Deceased,

to

The Alexandria Marine Railway & Shipbuilding Co.

Release of two judgments against Geo. Seaton, one for the sum of $160.00 interest and costs, and the other for $34.90 interest and costs.

(90) February 1, 1884. Deed Book 14, page 45.

Katie G. Johnson and Elmyra E. Goodhand

to

The Alexandria Marine Railway & Shipbuilding Co.

Release of lien reserved in deed dated April 20, 1874, and recorded Deed Book No. 4, page 61.

62 (91) February 1, 1884. Deed Book No. 14, page 47.

William C. Yeaton, Surviving Commissioner,

to

The Alexandria Marine Railway & Shipbuilding Co.

By virtue of the decree of the Circuit Court of Alexandria County, Virginia, in the Chancery cause of Mary E. Keith, complainant, vs. Thomas Keith and Katherine Keith, release of lien reserved in deed dated May 23rd, 1874, recorded in Liber 4, page 182.

(92) February 1, 1884. Deed Book No. 14, page 74.

David L. Smoot and The Alex. Marine Railway Co.

to

The Alexandria Marine Railway & Shipbuilding & Coal Co,

Release of deed of trust recorded in Liber A, No. 4, folio 72.

(93) April 7th, 1884. Deed Book No. 14, page 87.

The Alexandria Marine Railway & Shipbuilding Co. and John P. Agnew & Company

to

The Alexandria Marine Railway, Shipbuilding & Coal Co.

Conveys all that lot of ground with the buildings and improvements thereon, described as follows: Beginning on the east side of Union Street, the distance of 176 feet, 7 inches south of Gibbon Street, and running thence east in a straight line parallel to Gibbon Street into the Potomac River; returning thence to the point of beginning and running thence south from said beginning, and binding on Union Street 453 feet 2 inches, more or less, to a point
63 176 feet 7 inches north of Jefferson Street; thence east in a straight line parallel to Jefferson Street into the Potomac River; thence north in a straight line parallel to Union Street to the first line, together with all rights and appurtenances to the said lot of ground belonging, or in anywise appertaining, and together with all machinery etc. upon the said premises.

(94) April 7th, 1884. Deed Book No. 14, page 50.

Marine Railway, Shipbuilding & Coal Co.

to

Justus Schneider.

Conveys the property last above described, in trust to secure to the Alexandria Marine Railway & Shipbuilding Company, the payment of six notes and the interest thereon, for $2,810.00 each, being the deferred payments of the purchase money for said property, and the further sum of $3,140.00, and interest.

Memo.—Released. See Release Book No. 2, page 139.

(95) April 7th, 1884. Deed Book 14, page 115.

Jas. H. Reed & Albert Stuart, Trustees,

to

The Alexandria Marine Railway, Shipbuilding & Coal Co.

Release of Trust of April 1, 1878, in deed book 9, page 220.

(96) January 20th, 1906. Charter Book, Circuit Court, #3, page 42.

Charter of Marine Railway, Shipbuilding and Coal Co., amended by changing name to "Marine Railway & Coal Company, Incorporated."

164 (*i*) *Statement of Fact of Possession.*

That the Defendant was in possession of the shipyard property as set forth in the description thereof at the time of the institution of this suit, under and by virtue of the abstract and chain of conveyances and other muniments of title hereinbefore set forth, and that the first open and notorious claim of the Plaintiff, the United States, to the filled strip within the lines of the Shipyard property was asserted when it undertook to enclose said filled area, a few months prior to the institution of this suit. That the Defendant is still in possession of said filled area, claiming title under the various grants, charters, deeds, legal proceedings and other muniments of title in this stipulation set forth.

(j) Letters and Statements of Facts Relating to the Filling of the Land in Dispute.

United States Engineer Office,
920 Seventeenth St. N. W.

(1) Nov. 29, 1910.

Mr. H. B. Spencer, Vice-President So. Ry. Co., Washington, D. C.

SIR:—

I beg to acknowledge your letter of Oct. 31st in respect to the proposed harbor improvement near Jones Point, Alexandria, Virginia, under the Act of Congress of June 25th, 1910, and to say in reply that the consent contained in your letter is accepted with the understanding therein set forth, but of course this action on the part of this office shall in no way be construed as a waiver of any property or other right of the United States which they may have had prior to the beginning of the proposed improvement, or
165 which may lawfully be acquired by reason of such improvement.

For and in absence of Lieut. Colonel W. G. Langfitt, Corps of Engineers, U. S. Army.

Very respectfully,

(Sgd.) WARREN T. HANNUM,
Captain, Corps of Engineers.

(2) Oct. 31st, 1910.

Capt. W. T. Hannum, U. S. Engineer Corps, Washington, D. C.

DEAR SIR:—

Referring to your letter to Mr. Thom of the 22nd inst., and the previous correspondence between your office and this Company in respect to work desired to be done by the War Department in connection with the improvement of the harbor of Alexandria, Virginia, under the Act of Congress of June 25, 1910, and to the conference this morning between yourself and Mr. Harrison, representing the War Department, and Mr. Thom, General Counsel of this Company, and myself representing it, I beg to say that the Southern Railway Company grants the permission, requested by you, to erect, on the property of this Company at and near Jones Point on the Potomac River, an embankment to retain the material proposed to be excavated from the harbor of Alexandria, in connection with the proposed harbor improvement, and also to install on the property of this Company, at the location in question, the necessary weirs to carry off the surplus water pumped in with such excavated
166 material; but this consent is given on the understanding and condition that no property right of this company shall be deemed to be impaired by any of the work so proposed to be done by the United States Government, or by this consent, all of its rights of property, including riparian rights, in, and in respect to, any of the reclaimed land to remain after such work is done and such im-

provement is completed, unimpaired and on the further understanding and condition that the United States Government is not to be deemed to have acquired any property rights by virtue of any such work or improvement, and moreover is, at its own expense, to establish sufficient drains made necessary by the proposed work of the Government and is to protect the railroad tract and other property of this company from any and all damage growing out of the method of doing the work in question. It is further understood that all work of the United States Government in connection with the proposed improvements at the point in question is, so far as the property of this company is concerned, to be considered as done under this consent, and that this Company waives no right that it may have to secure such compensation as it may be entitled to for any other damage that may accrue to it in its operation of its railroad, or otherwise, not hereinabove mentioned.

Yours respectfully,

(Sgd.) H. B. SPENCER,
Vice President.

That before the engineers in charge of the work of filling Battery Cove began their work, they had a similar understanding to that with the Southern Railway Company, in regard to the rights
167 of the Marine Railway in any part of the filled area, included within the lines of its property hereinbefore described.

This stipulation shall not, nor shall anything herein, be construed to preclude either party from offering, at the trial of the general issue, or upon the trial of any other issue in this case, any other or further admissible evidence.

Witness our hands this 5th day of May, 1919.

HENRY H. GLASSIE,
Attorney for the Plaintiff.
JAS. R. CATON,
Attorney for the Defendant.

Stipulation Waiving Jury Trial.

Filed May 27, 1919.

* * * * * * *

This 27th day of May, 1919, came the Plaintiff by its Attorney, and as well the Defendant by its Attorney, and waived a trial by jury of the general issue in this cause, and submitted all questions of law and fact to be tried and determined by the Court, without intervention of a jury, and filed this Stipulation with the Clerk of this Court.

HENRY H. GLASSIE,
Attorney for Plaintiff.
JAMES R. CATON,
Attorney for Defendant.

168 Supreme Court of the District of Columbia.

Tuesday, June 24th, 1919.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice presiding.

* * * * * * *

Comes now the plaintiff by its attorney Mr. Henry H. Glassie and as well the defendant by its attorney Mr. James R. Caton, and having by their stipulation filed herein May 27th 1919, waived trial by jury agree to try this cause before the Court upon the Stipulation of Facts, filed on the 23d day of May 1919.

Whereupon, the same being argued and submitted to the Court, after argument thereon by the respective attorneys and being considered, the Court finds the issue in favor of the plaintiff for the whole of the property and interest claimed in plaintiff's declaration.

Defendant's Motion in Arrest of Judgment, etc.

Filed June 24, 1919.

* * * * * * *

Comes now the defendant, Marine Railway and Coal Company, Inc., and moves the court in arrest of judgment, to set aside the finding of the court for the plaintiff on the trial of the general issue, upon the defendant's plea of not guilty, and for a new trial, upon the following grounds:

(1) Because the court ruled and found on the issue joined upon the defendant's plea to the jurisdiction in favor of the plaintiff, and ruled and held that the plaintiff's cause of action did not arise and the real estate described in the plaintiff's declaration was not
169 situated within the limits of the City of Alexandria, County of Alexandria, State of Virginia, but within the limits of the District of Columbia, and within the jurisdiction of this court.

(2) Because the court overruled the defendant's objection to the admissibility in evidence of the statements of matters of fact, documents, plats and exhibits stated and referred to in the said stipulations filed in this case January 17, 1916, and November 22, 1916, offered in evidence by the plaintiff to maintain the general issue on its part, and ruled that the same be admitted and considered on the trial of the general issue as evidence to show title in the plaintiff to the fee in the premises described in the declaration.

(3) Because the court sustained the objection of the plaintiff to the admissibility in evidence of the statement of fact, documents, plats and exhibits, stated and referred to in the said stipulations filed in this cause January 17, 1916, April 21, 1916, and May 23, 1919,

offered in evidence by the defendant to maintain the general issue on its part, and ruled that the same were inadmissible and that this same be excluded from consideration on the trial of the general issue upon the defendant's plea of not guilty, as evidence to show title in the said defendant to the fee in the premises described in the declaration.

(4) Because the rulings of the court and the finding of the court on the trial of the general issue upon the defendant's plea of not guilty, in favor of the plaintiff, and that the plaintiff is entitled to recover the fee in the premises described in the declaration,
170 are contrary to the evidence and the law in this case.

JAS. R. CATON,
Attorney for Defendant.

Supreme Court of the District of Columbia.

Wednesday, June 25", 1919.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record; whereupon, pursuant to agreement, defendant's motion in arrest of judgment, is submitted to the Court, and being considered, is by the Court overruled and judgment is ordered. Thereupon defendant's attorney prays an exception which is hereby noted.

Wherefore, it is considered that the plaintiff do have and recover of the defendant, the following described real estate, to wit: a certain parcel of land containing 60,984 square feet situated below and to the east of the high-water line of the Potomac River at or adjacent to the City of Alexandria, State of Virginia, as said high-water line existed on the first day of January, A. D. 1911, within the limits of the District of Columbia, and more particularly described by metes and bounds to be as follows:

Beginning at a point 262.47' South of the Center line of Franklin St. and 54.6' E. of the W. line of Union St. measured at right angles thereto, said point being the end of a fence, and running thence

(1) N. 74° 52' 10" E.—368' more or less, to a point; thence

(2) By a straight line 172' more or less to the N. western end of retaining wall; thence,

171 (3) 195' more or less along retaining wall as said wall runs to point; thence

(4) N. 80° 49 W.—632' more or less, along a line parallel to the center line of Franklin St. to point of beginning, in fee simple, and all the rights, easements, privileges, and appurtenances to

he same belonging or in anywise appertaining, together with costs f suit to be taxed by the clerk and have execution thereof.

From the foregoing, the defendant by its said attorney, in open ourt, notes an appeal to the Court of Appeals; whereupon, the pen-lty of a bond for costs is hereby fixed in the sum of Three Hun-ired Dollars.

Thereupon, the bill of exceptions noted herein, is submitted to the Court, and by the Court signed and made of record nunc pro tunc.

Stipulation as to Certification of Exhibits.

Filed June 25, 1919.

* * * * * * *

It is stipulated by and between counsel for the plaintiff and for the defendant that the exhibit filed with the declaration and all and singular the exhibits described in the stipulations herein filed in this cause, may be certified by the Clerk to the Court of Appeals with the transcript of the record in lieu of copies of the same, and that in the Court of Appeals such exhibits may be used at the hearing of the cause and inspected and examined by the Court as part of the record on appeal, and the printing of the same dispensed with.

HENRY H. GLASSIE,
Attorney for Plaintiff.
JAS. R. CATON,
Attorney for Defendant.

172 *Bill of Exceptions.*

Filed June 25, 1919.

* * * * * * *

Be it remembered that the issue joined on the defendant's general issue plea of not guilty to the declaration of the plaintiff in the above entitled cause, came on for trial before Mr. Justice Stafford, holding Circuit Court, Division No. 2, and a jury, whereupon, before the empaneling of the jury, the plaintiff and the defendant, by their respective counsel, in open court, stipulated that a jury be dispensed with upon the trial of said issue; that the empaneling of a jury be waived by both parties, and that said issue, joined upon said plea, in respect of matters of fact, as well as in respect of matters of law, be submitted to the court, so being held by said Justice, for trial and determination.

Thereupon to maintain the issue on its part joined, the plaintiff, the United States of America, gave in evidence, and submitted to the court all and singular the matters and things on its behalf stated and referred to in the stipulation filed in this cause on Jan-

uary 17, 1916, and the further stipulation filed in this cause November 22, 1916; *that is to say:*

(A) All the statements of matters of fact, and all the documentary evidence, with the plats and exhibits, stated and referred to in said stipulation of January 17, 1916, under the paragraphs designated by Roman numerals as follows:

I—from sub-paragraphs "*a*" to "*k*," both inclusive;

III—from sub-paragraphs "*a*" to "*x*," both inclusive;

173 VI—from sub-paragraphs "*a*" to "*i*," both inclusive.

VIII—from sub-paragraphs 1 to 22, both inclusive.

(B) All the statements of fact and all the documentary evidence with the plats and exhibits stated and referred to in said further stipulation of November 22, 1916, under paragraphs designated "*a*" to "*g*," both inclusive.

Whereupon the defendant, by its counsel, interposed an objection to the offer of the plaintiff, in evidence, of all the matters of fact and documentary evidence, plats and exhibits, stated and referred to in the said stipulations filed in this cause on January 17, 1916, and November 22, 1916, to wit:—

(A) In the stipulation of January 17, 1916, under the paragraphs designated by Roman numerals, as follows:—

I—from sub-paragraphs "*a*" to "*k*," both inclusive;

III—from sub-paragraphs "*a*" to "*x*," both inclusive;

VI—from sub-paragraphs "*a*" to "*i*," both inclusive;

VIII—from sub-paragraphs 1 to 22, both inclusive;

(B) In the stipulation of November 22, 1916, under paragraphs designated "*a*" to "*g*," both inclusive.

The said defendant, by its counsel, insisting that the said statements of matters of fact, and all the documentary evidence with the plats and exhibits, stated and referred to in said stipulations of January 17, 1916, and November 22, 1916, are inadmissible as evidence on behalf of the plaintiff on the trial of the general issue upon the defendant's plea of not guilty, on the grounds following, namely:—

(1) That the premises described in the declaration is within the territorial limits of the City of Alexandria, and the State
174 Virginia, and that the subject-matter of this suit is within the jurisdiction of the Courts of the City of Alexandria, and of the State of Virginia.

(2) That under the compact of 1785, between the State of Virginia and the State of Maryland, and particularly under the provisions of the sixth and seventh paragraphs of said compact, the River Potomac is made a common highway for the purposes of navigation and commerce to the citizens of Virginia and Maryland, and of the

United States, and to all other persons in amity with said States, trading to or from Virginia or Maryland, and that the citizens of each State, respectively, have full property in the shores of Potomac River adjoining their lands, and all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements so as not to obstruct or injure the navigation of the river, etc.; and that by virtue of these provisions in said compact there was vested in the State of Virginia, and her citizens, the riparian right of access to and the use of the Potomac River in common with the State of Maryland, and the United States, and all other persons trading to or from Virginia or Maryland; and there was also vested in the State of Virginia and her citizens, full property in the shores of the Potomac River adjoining their lands, with all emoluments and advantages thereunto belonging; and the right to make and carry out wharves and other improvements so as not to obstruct or injure the navigation of the river. That the provisions of the seventh paragraph of said compact vested in the State of Virginia territorial jurisdiction of the shores of the Potomac River adjoining the lands of its citizens, and property and dominion in the shores of the Potomac River,
175 and the right of making and carrying out wharves, and other improvements, so as not to obstruct or injure the navigation of the river, for the use and benefit of her citizens.

(3) That in 1789, when the State of Virginia ceded to the United States the territory of Alexandria City and County to form a part of the District of Columbia, said State, and her citizens, by virtue of said compact, were possessed of the jurisdiction, property and dominion of the shores of the Potomac River, and the right to construct wharves and other improvements into the river Potomac insofar as the same did not obstruct the navigation of the river; and when, by the Act of 1789, the State of Virginia ceded the territory of Alexandria City and County to the United States, it ceded all of its jurisdiction, property, dominion and rights in the Potomac River and the shores thereof, to the United States.

(4) That the cession of Maryland of territory for the District of Columbia, made in 1791 to the United States, did not, and could not, vest in the United States any of the jurisdiction, property, dominion or rights secured to the State of Virginia, and her citizens, by the compact of 1785, the State of Maryland, having previous to her said cession, vested such jurisdiction, property dominion and rights in the State of Virginia, and her citizens, and which were already vested in the United States by the Virginia cession of 1789.

(5) That by the Act of Congress, approved July 9, 1846, the United States re-ceded to the State of Virginia, and her citizens, all that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same and forever relinquished to the State of

Virginia all the rights and jurisdiction, previously ceded by
176 the State of Virginia to the United States, within the said territory of Alexandria City and County, and thereby restored the State of Virginia, and her citizens, to all the jurisdiction, property, dominion and rights held and enjoyed by said State, and her citizens, under said compact of 1785, previous to the cession by Virginia to the United States, of 1789.

(6) That during the time that the territory of Alexandria City and County was a part of the District of Columbia there was no Act of Congress passed in any way abrogating the property or rights conferred upon the State of Virginia, and her citizens, by said compact of 1785.

(7) That by the Arbitration and Award of January 16, 1877 accepted by the State of Virginia by the Act of the General Assembly of that State, approved March 14, 1878, and by the State of Maryland, by the Act of the General Assembly of that State approved April 4th, 1878, and consented to by the Act of Congress, approved March 3, 1879, the true boundary line between the State of Virginia and the State of Maryland, was, agreeably to the compact between said States of 1785, established at low water mark on the south side of the Potomac River, and to which Virginia has the right in the soil, to be measured from low-water mark at one headland to low-water mark at another, without following indentations, bays, creeks, inlets or affluent rivers, and to which Virginia is entitled to full dominion over the soil to low water mark on the south shore of the Potomac, and has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, all agreeably to said com
177 pact. And that by said Act of Congress the said Arbitration and Award and agreement between the said States, and to each and every part and article thereof, the plaintiff, the United States of America, consented.

(8) That it has been judicially determined by the Supreme Court of the United States, that said Arbitration and Award established the true boundary line of Virginia, agreeably to the compact of 1785, at low-water mark on the south side of the Potomac River to which the State of Virginia has a right in the soil, and that said low-water mark is to be measured from low-water mark at one headland to low-water mark at another, without following indentations bays, creeks, inlets or affluent rivers; and that Virginia is entitled not only to full dominion of the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfere with the proper use of it by Maryland, all agreeable to the compact of 1785.

(9) That by reason of the matters and things set forth in the above grounds of objection, the plaintiff is estopped and barred from setting up claims of title to the fee in the premises described in the declaration.

Thereupon, the court as and when each of the said statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, and November 22, 1916, were offered in evidence by the plaintiff to maintain the issue on its part upon the general issue, upon the defendant's plea of not guilty, overruled the objection of the defendant to the
178 same so far as concerns the trial of the general issue, and as offered to show title on the part of the said plaintiff to the premises described in the declaration. To which ruling of the court in respect of each and every statement of matters of fact, document, plat and exhibit so offered in evidence by the plaintiff, the defendant duly excepted.

Thereupon, to maintain the issue on its part joined, the defendant, Marine Railway and Coal Company, Inc., gave in evidence, and submitted to the court all and singular the matters and things on its behalf stated and referred to in the stipulation filed in this cause on January 17, 1916, and in the supplemental stipulation filed in this cause on April 21, 1916; *that is to say:*

(A) All the statements of matters of fact and all the documentary evidence with the plats and exhibits, stated and referred to in said stipulation of January 17, 1916, under the paragraphs designated by Roman numerals, as follows:

II—from sub-paragraph- "a" to "g," both inclusive;
IV—from sub-paragraphs "a" to "z," both inclusive;
V—from sub-paragraphs "a" to "m," both inclusive;
VII—from sub-paragraphs 1 to 6, both inclusive;

(B) All the tsatements of matters of fact and all the documentary evidence, with the plats and exhibits, stated and referred to in the supplemental stipulation of April 21, 1916, under the paragraphs designated "a" to "q," both inclusive.

And thereupon, further to maintain the issue on its part joined, the defendant, Marine Railway and Coal Company, Inc., offered in evidence, from the stipulation filed in this cause on May 23, 1919, paragraph "e" thereof being the grant made by King James II, to Thomas Lord Culpeper of the Northern Neck of Virginia,
179 as in said paragraph set forth.

Whereupon, counsel for the plaintiff interposed and objected to the offer of said grant upon the grounds following:

(1) That the *locus in quo* being, and having been found in this cause to be, within the territorial limits of the District of Columbia, the same being part of the original Province of Maryland, granted by King Charles I to Caecilius Calvert, Lord Baltimore, on June 20 1632, the subsequent patent to Lord Culpeper granting a tract situate and being in Virginia did not, and could not, include said *locus*

and was wholly inoperative to pass or convey any right, title, estate or interest in the bed of the Potomac River to the high-water line on the Virginia shore, already vested by prior grant in Lord Baltimore.

(2) That it has already been adjudicated by the Supreme Court of the United States, and it is the settled law of this court that "the grant to Lord Baltimore in unmistakable terms included the Potomac River and the soil under the same to the high-water mark on the Southern or Virginia shore; that the territory thus granted was never divested by any valid proceeding prior to the Revolution; nor was such grant affected by the subsequent grant to Lord Culpeper."

(3) That said grant to Lord Culpeper cannot be a source of title to land, including the land here in issue, eastward and northward of the original high-water mark on the Southern shore of the Potomac River and, therefore, within the Province of Maryland granted to the Proprietary thereof on June 20, 1632, and legally derived to the plaintiff, the United States of America, from the State of Maryland, the lawful successor of said Proprietary; and

180 (4) That the *locus in quo* is not within the lands conveyed by said grant.

The court sustained said objection and refused to admit said grant in evidence upon the general issue plea herein; and, upon plaintiff's motion on the same grounds, further ordered that the same, as offered in evidence in sub-paragraph "g" of paragraph or Section IV of the stipulation filed in this cause on January 21, 1916, be excluded and struck out so far as concerns the trial of the general issue; to which ruling of the court the defendant duly excepted.

The defendant then offered in evidence from said stipulation filed herein on May 23, 1919, pragraph "f" thereof being an Act for confirming the grants made by his Majesty within the bounds of the Northern Neck as they are now established, passed by the Virginia Assembly on October 27, 1748. Whereupon, counsel for the plaintiff objected to said offer on the grounds following:

(1) The lands referred to in said Act being within the bounds of the Northern Neck of Virginia, have the same limits as those in the grant to Lord Culpeper, previously offered and rejected, and, therefore, do not embrace the soil under the Potomac River below the high-water mark already vested by the charter of 1632 in the Lord Proprietary of Maryland.

(2) Said Act is subject to all of the objections heretofore made with respect to the Culpeper grant, which objections, *mutatis mutandis,* are here repeated.

The court sustained the said objection and refused to admit said Act in evidence, and also, upon plaintiff's motion, further ordered

at the said Act, as offered in evidence in sub-paragraph "h" of paragraph or section IV of the stipulation filed in this cause
31 on January 17, 1916, be struck out so far as the same concerns the trial of the general issue herein; to which ruling of the urt the defendant duly excepted.

The defendant then offered in evidence from the stipulation filed this cause of January 17, 1916, Section IV, paragraph "e" thereof, ing a grant made on July 2, 1669, by Sir William Berkeley, nt., Governor of Virginia, to John Matthews. Whereupon counsel r the plaintiff objected to said offer on the grounds following:

(1) Said grant does not purport to convey the *locus in quo.* nd this, for two reasons: (*a*) The tract conveyed is described as ing and being on the Northwest side of the Potomac River and as ginning at a tree standing near the head of Mussell Creek, and nning down said Creek to a point of land abutting on the Potomac iver and from thence down the said River. It therefore does not nvey land which, at that time, and until 1911, constituted part of e bed of the Potomac River below the high-water mark. (*b*) The act is described as lying and being on the Southwest side of the reek called Mussell Creek, which is shown by sub-paragraph "g" of aragraph or section II of the stipulation filed on January 17, 1916, eretofore offered in evidence, to be the same as Indian Cabin Creek nd now known as Great Hunting Creek. Said Matthews' tract ncludes no part of the upland adjacent to the *locus in quo,* but is eparated therefrom by the full width of the Great Hunting Creek.

(2) The grant is a grant of land in the Province of Virginia only. t therefore could not include, and was inoperative to pass any right, itle, estate or interest in the soil of the bed of the Potomac River, which, up to the high-water mark on the Southern shore
82 had already been previously vested in the Lord Proprietary of Maryland.

(3) Said grant is subject to all objections heretofore made with espect to the offer of the Culpeper grant already rejected, which bjections are here repeated.

The court sustained said objection, whereupon counsel for the lefendant stated that the said grant was offered in evidence not for he purpose of deraigning title, on behalf of the defendant to the ands in issue, but for the sole purpose of defining by reference, the erms used to describe the land conveyed in another grant namely he Howsen grant, under which the defendant did claim. The court hereupon permitted the said Matthews grant to be read in evidence for the purpose stated, and no other.

The defendant then offered in evidence, from the stipulation filed in this cause on May 23, 1919, paragraph "d" thereof, being a grant made on October 21, 1669, by Sir William Berkeley, Knt., Governor of Virginia, to Robert Howsing. Whereupon counsel for he plaintiff objected to said offer on the grounds following:

(1) Said grant does not purport to convey the *locus in quo*. The grant describes the tracts conveyed as situate, lying and being on the west side of the Potomac River and its easterly boundary as extending down said river. It therefore does not carry land, which, at that time and until 1911, constituted part of the bed of said river below the high-water mark.

(2) The grant is but a grant of land in the Colony of Virginia, which, at its date, did not, and could not, include the soil of the bed of the Potomac River, which was then within the Province of Maryland, the whole of said Province, extending to the high-
183 water mark on the southern shore, having been previously separated from Virginia by the terms of the grant to Lord Baltimore on June 20, 1632.

(3) Inasmuch as, at the date of said Howsing grant, the dominion and property of the soil under the Potomac River to the high-water mark thereof, including the *locus in quo*, was vested in the Lord Proprietary of Maryland as a part of the prerogative rights, or *jura regalia*, annexed to the political powers conferred on him in that capacity, private ownership in said soil was legally impossible. The same was not then subject to private grant by the Maryland Proprietary, much less by the Governor of Virginia.

(4) Said grant is subject to all the objections heretofore made with respect to the offer of the Culpeper grant, already rejected, which objections are here repeated. The court sustained said objection and refused to admit said Howsing grant in evidence, and, upon plaintiff's motion on the same grounds, further ordered that the same, as offered in evidence in sub-paragraph "f" of paragraph or section IV, and at the end of sub-paragraph "z" of paragraph or section IV of the stipulation of January 17, 1916, be excluded and struck out so far as concerns the trial of the general issue: to which ruling of the court the defendant duly excepted.

The defendant then offered in evidence, from the stipulation filed in this cause on May 23, 1919, paragraph "g" being the report of the decision of the Court of Appeals of Virginia in the case of *Birch v. Alexander*, reported in I Washington Reports, page 34. Thereupon, counsel for the plaintiff objected to the offer of said report upon the grounds following:

184 (1) That the lands to which said opinion referred were lands within the limits of the Colony and State of Virginia.

(2) That the Court of Appeals of Virginia was without power to adjudicate the title to lands below the high-water mark of the Potomac River, and, therefore, within the limits of the Province and State of Maryland, and that part of the District of Columbia which was ceded by Maryland.

(3) That the estates and interests claimed by the parties to said cause of *Birch v. Alexander* were necessarily confined to lands which

ere within the physical boundaries of the Howsing patent and the ulpeper grant, both of which have been already excluded.

(4) Said offer is subject to the same objections heretofore made ith respect to the offer of the Culpeper patent, which objections *utatis mutandis*, are here repeated. The court sustained said ob- ction and refused to admit the said opinion in evidence: to which ling of the court the defendant duly excepted.

The defendant thereupon offered in evidence *seriatim*, the wills eds, and other assurances constituting the items in paragraph "h" umbered from 1 to 95, both inclusive, stated and referred to in the ipulation filed in this cause on May 23, 1919, as being the record idence of title under which it claimed to be the owner in fee simple, ot only of the upland above the mean high-water line and adjacent and abutting upon the *locus in quo*, but also of the *locus in quo* described in the plaintiff's declaration.

To the first of which said offers, being the last will of John Alex- nder, deceased, and successively to each of said offers when and as ade, the plaintiff, by its counsel, objected upon the grounds fol- wing:

85 (1) That the said instrument was inoperative to pass any part of the *locus in quo* for the reason that the author of said nstrument was a stranger to the title of said *locus*, which, at the spective dates when said instrument was made and took effect, was art of the submerged bed of the Potomac River below the high- ater mark, and therefore not within the tenement of any person hose estate was then in the author of said instrument.

(2) That whatever right, title, interest or estate the author of such nstrument might, under the local law of Virginia, have in the pland in the State of Virginia, abutting upon and bounded by the ean high-water line of the Potomac River as it existed down to he 6th day of September, 1910, when the work of filling in the *ocus in quo* began, said right, title, interest or estate was limited by he territorial limits of the State of Virginia, as already found and etermined upon the plea of jurisdiction, previously tried in this ause.

(3) That the title to the *locus in quo* as part of the submerged oil constituting a portion of the bed and shore of the Potomac River ithin and below the line of mean high-water on the right or western ank of the Potomac River as it existed on and prior to the 19th day f December 1791, was vested successively and without interruption n the Lord Proprietary of Maryland, the State of Maryland and the nited States of America, from the date of the charter of King harles I to Lord Baltimore, and the author of said instrument is ot shown to have had at the date thereof, or any subsequent time ny right, title, estate or interest in said *locus* by virtue of any valid grant, or other assurance of title from such Lord Proprie-
186 tary or the State of Maryland, or the United States of America.

Thereupon, the court, as and when each of the said instruments was offered in evidence, sustained the objection to the same, so far as concerns the trial of the general issue and as offered to show title on the part of said defendant to the said *locus*. To which ruling of the court in respect of each and every instrument so offered, the defendant duly excepted.

Defendant then offered in evidence from the stipulation filed in this cause on May 23, 1919, paragraph 96 thereof, being the amendment of the charter of the Marine Railway Shipbuilding and Coal Company, changing the name thereof to the Marine Railway and Coal Company, Inc., the statement of fact of the possession of the premises described in the declaration, the letters No. 1 and 2, and the statement following the said letters, contained in said stipulation of May 23, 1919.

Thereupon the plaintiff and the defendant each announced that its case was closed. The several stipulations hereinbefore referred to are incorporated in and made a part of this bill of exceptions as if herein fully and at length repeated, and the testimony and proof given in evidence from said stipulations and the testimony and proof offered in evidence from said stipulations constituted respectively, all the evidence offered and admitted and all the evidence offered and rejected on the trial of the said general issue plea, saving and excepting matters of which judicial notice may be taken. Thereupon, the defendant requested and moved the court to rule as follows:

187 (1) That the statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, and November 22, 1916, offered in evidence by the plaintiff to maintain the general issue on its part, are on the grounds set forth in the defendant's objections thereto, inadmissible as evidence to show title in the plaintiff to the fee of the premises described in the declaration, and that the same be excluded as evidence to be considered on behalf of the plaintiff on the trial of the general issue upon the defendants's plea of not guilty.

(2) That the statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, of April 21, 1916, and of May 23, 1919, offered in evidence by the defendant to maintain the general issue on its part, are on the grounds set forth in the defendant's objections to the evidence offered by the plaintiff, admissible as evidence to show title, in the defendant, to the fee of the premises described in the declaration, to be considered on the trial of the general issue, upon the defendant's plea of not guilty.

(3) That the plaintiff, on the law and evidence in this case, is not entitled to recover against the defendant the fee of the premises in the declaration described, and that the finding of the court on the general issue joined upon the defendant's plea of not guilty is for the defendant.

But the court refused to grant said request and motion, to which refusal the defendant duly excepted on the ground that the said ruling of the court is not sustained by the law and evidence in this cause.

Thereupon the plaintiff prayed and moved the court to rule as follows:

188 (1) That, by the true construction of the charter of Maryland granted by the Crown on June 20, 1632, to Cæcilius Calvert, Baron of Baltimore, his heirs and assigns, the Lord Proprietary of the Province of Maryland became and was seized as of fee, in right of his dominion, of and in the soil of the Potomac River to the high-water mark on the further, southern or Virginia shore of the same.

(2) That, in consequence of the American Revolution, the entire property, title and estate of the Lord Proprietary of the Province of Maryland in and to the soil of said river, being part of the prerogative and royal rights annexed to the political powers conferred on him in that capacity, devolved upon and vested in the people of the State of Maryland and the Government ordained by them.

(3) That the legal effect of the Maryland Acts of Cession and of Confirmation passed, respectively, December 23, 1788, and December 19, 1791, and the Acts of Congress approved respectively July 16, 1790 and March 2, 1791, accepting the same for the permanent seat of the Government of the United States, was to transfer to and vest in the United States, as the sole and exclusive sovereign of the Federal District, the entire property, title and estate of the State of Maryland in and to the soil of the Potomac River within the boundary lines of the said District as definitely located by the President's proclamation of March 30, 1791; and the United States, as successor to the State of Maryland, thereby became and was seized as of fee of and in the soil of said river up to the high-water mark on the further, southern or Virginia shore thereof.

189 (4) That the Acts of Congress, approved, respectively, June 25, 1910 and February 27, 1911 (referred to in subparagraphs "*e*" and "*f*" of Section 1 of the stipulation of January 17, 1916), conferred upon the Secretary of War, full power and authority, acting in that behalf through the Chief of Engineers and the Engineer officer in charge of the United States Engineer office at Washington, D. C., for the purpose of improving the Potomac River by deepening the channel thereof in accordance with the report submitted in House Document No. 1253, 60th Congress, 2nd Session, recited in said Act of Congress approved June 25, 1910, to cause a rip-rap wall or revetment to be constructed on the submerged soil constituting the bed of the Potomac River along the edge of the channel and between the points stated in the evidence, and, to cause material dredged from the bed of said river, in the course of deepening the channel thereof, to be deposited on the river bed behind said wall and between the same and the high-water mark of said

river, and thereby to cause the submerged soil behind said wall and between the same and the line of ordinary or mean high-water on the right, southern or western shore of said river to be filled in and raised above the water level of said river.

(5) That any land raised upon the original submerged bed of the Potomac River eastward or riverward of the ordinary or mean line of high-water, under the authority and in the manner described in the preceding instruction, would, in law, continue to be the property and estate of the owner of the fee of the submerged bed on which the same was raised.

(6) That, since the compact made in the year 1785 between Virginia and Maryland was the act of the two States in their character as States, the only parties to the same being the States themselves and not the citizens thereof as such, individually, said compact
190 rested solely upon the mutual agreement of the States in their respective political capacities and was consequently subject, at any and all times, to be modified, changed, or abrogated in any or all of its stipulations by the joint act of the said States, and therefore, did not, and could not, constitute in any sense a grant from the State of Maryland to any individual citizen of the State of Virginia of any right, title, estate or interest in the soil of the Potomac River below the high-water mark thereof and thus within the limits of the State of Maryland.

(7) That, when the two sovereign states, which were the sole parties to said compact, and possessed power to alter or abrogate it at their pleasure, ceded the portions of territory respectively belonging to them on the right and left banks of the Potomac River to the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons, pursuant to the 8th Section of the I Article of the Constitution, the United States, as the single sovereign of the two territories thus united in one, displaced both of the contracting parties on whose mutuus consensus the compact rested, and said compact was thereby necessarily dissolved and extinguished.

(8) That nothing contained in the Act of Congress approved July 9, 1846, (9 Stat. Ch. 35), whereby that portion of the District of Columbia ceded to the United States by the State of Virginia was ceded and relinquished to the said State, operated to renew or recreate, in favor either of Virginia or of the United States, the stipulations of the compact originally made in 1785 by and between the States of Virginia and Maryland.

The defendant objected to the granting of said request, but
191 the court overruled said objection and granted the same; to which ruling the defendant duly excepted on the ground that the said ruling of the court is not sustained by the evidence and law in this case.

Thereupon, the issue joined on the defendant's general issue plea of not guilty, having been argued by counsel for the respective

parties, was submitted to the court, so being held by said Justice, for determination; and the said court, having duly considered the same, found the said issue in favor of the plaintiff, the United States of America, for the whole of the property and interest claimed in the plaintiff's declaration.

And thereupon, the defendant, by its counsel, moved the court, in writing filed in this cause, in arrest of judgment, to set aside the finding of the court in favor of the plaintiff on the trial of said general issue, upon the defendant's plea of not guilty, and for a new trial, upon the following grounds:

(1) Because the court ruled and found on the issue joined upon the defendant's plea to the jurisdiction in favor of the plaintiff, and ruled and held that the plaintiff's cause of action did not arise and the real estate described in the plaintiff's declaration was not situated within the limits of the City of Alexandria, County of Alexandria, State of Virginia, but within the limits of the District of Columbia, and within the jurisdiction of this court.

(2) Because the court overruled the defendant's objections to the admissibility in evidence of the statements of the matters of fact, documents, plats and exhibits stated and referred to in the said stipulations filed in this cause January 17, 1916, and November 22, 1916, offered in evidence by the plaintiff to maintain the general
192 issue on its part, and ruled that the same be admitted and considered on the trial of the general issue as evidence to show title in the plaintiff to the fee in the premises described in the declaration.

(3) Because the court sustained the objection of the plaintiff to the admissibility in evidence of the statements of fact, documents, plats and exhibits, stated and referred to in the said stipulations filed in this cause January 17, 1916, April 21, 1916, and May 23, 1919, offered in evidence by the defendant to maintain the general issue on its part, and ruled that the same were inadmissible and that the same be excluded from consideration on the trial of the general issue upon the defendant's plea of not guilty, as evidence to show title in the said defendant to the fee in the premises described in the declaration.

(4) Because the rulings of the court and the findings of the court on the trial of the general issue upon the defendant's plea of not guilty, in favor of the plaintiff, and that the plaintiff is entitled to recover the fee in the premises described in the declaration, are contrary to the evidence and the law in this case.

All of which several motions the court overruled and to which ruling of the court the defendant duly excepted.

And thereafter, it was considered by the court that the United States of America recover against the defendant, Marine Railway and Coal Company, Inc., the real estate and premises, described and claimed in the plaintiff's declaration herein, in fee simple absolute, and all rights, easements, privileges and appurtenances to the

same belonging, or in anywise appertaining, and have thereof
193 its possession against the said defendant, and its legal costs in that behalf expended.

Be it further remembered, that each of the separate and several exceptions taken by counsel for the defendant, as hereinbefore set forth, was so taken before the issue joined on said plea of not guity, was submitted for determination, and that each of said exceptions was then and there separately and severally entered upon the minutes of said Justice, and thereupon the defendant prayed, that its bill of exceptions filed in this cause on the 22nd day of November, 1916, be incorporated in, and made a part of this bill of exceptions as if herein fully and at length repeated and set out in detail, and the defendant further prayed the court to sign and seal this, its bill of exceptions, according to the form of the Statute in such cases made and provided, which is accordingly done, and said bill of exceptions is hereby made a part of the record in said cause, this 25" day of June, 1919; now for then.

WENDELL P. STAFFORD,
Justice.

Service of a copy of the defendant's exceptions hereto attached and of notice of the time fixed to settle the same, acknowldged this 25" day of June, 1919.

HENRY H. GLASSIE,
Attorney for Plaintiff.

194 *Assignment of Errors.*

Filed June 25, 1919.

* * * * * * *

Comes now the defendant, Marine Railway and Coal Company, Inc., and says that the Supreme Court of the District of Columbia erred in the following particulars, which, upon its appeal to the Court of Appeals, said defendant assigns as error:

(1) The court erred in ruling and in finding on the issue joined upon the defendant's plea to the jurisdiction in favor of the plaintiff, and in ruling and holding that the plaintiff's cause of action did not arise and the real estate described in the plaintiff's declaration was not situated within the limits of the City of Alexandria, County of Alexandria, State of Virginia, but within the limits of the District of Columbia, and within the jurisdiction of this court.

(2) The court erred in admitting in evidence the statements of the matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations filed in this cause January 17, 1916, and November 22, 1916, offered in evidence by the plaintiff to maintain on its part the general issue upon the defendant's plea of not guilty to the declaration.

(3) The court erred in refusing to admit in evidence the statements of fact, documents, plats and exhibits, stated and referred to in the said stipulations filed in this cause January 17, 1916, April 21, 1916, and May 23, 1919, offered in evidence by the defendant to maintain on its part the general issue upon the defendant's plea of not guilty to the declaration.

195 (4) The court erred in refusing to rule, as a matter of law:

(*a*) That the statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, and November 22, 1916, offered in evidence by the plaintiff to maintain the general issue on its part, are, on the grounds set forth in the defendant's objections thereto, inadmissible as evidence to show title in the plaintiff to the fee of the premises described in the declaration, and that the same be excluded as evidence to be considered on behalf of the plaintiff on the trial of the general issue upon the defendant's plea of not guilty.

(*b*) That the statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, of April 21, 1916, and of May 23, 1919, offered in evidence by the defendant to maintain the general issue on its part, are, on the grounds set forth in the defendant's objections to the evidence offered by the plaintiff admissible as evidence to show title, in the defendant, to the fee of the premises described in the declaration, to be considered on the trial of the general issue, upon the defendant's plea of not guilty.

(*c*) That the plaintiff, on the law and evidence in this case, is not entitled to recover against the defendant the fee of the premises in the declaration described, and that the finding of the court on the general issue joined upon the defendant's plea of not guilty is for the defendant.

(5) The court erred in ruling, as a matter of law:

(*a*) That, by the true construction of the charter of Maryland granted by the Crown on June 20, 1632, to Cæcilius Calvert
196 Baron of Baltimore, his heirs and assigns, the Lord Proprietary of the Province of Maryland became and was seized as of fee, in right of his dominion, of and in the soil of the Potomac River to the high-water mark on the further, southern, or Virginia shore of the same.

(*b*) That, in consequence of the American Revolution, the entire property, title and estate of the Lord Proprietary of the Province of Maryland in and to the soil of said river, being part of the prerogative and royal rights annexed to the political powers conferred on him in that capacity, devolved upon and vested in the people of the State of Maryland and the Government ordained by them.

(*c*) That the legal effect of the Maryland Acts of Cession and of Confirmation passed, respectively, December 23, 1788, and December 19, 1791, and the Acts of Congress, approved, respectively, July

16, 1790, and March 2, 1791, accepting the same for the permanent seat of the Government of the United States, was to transfer to and vest in the United States, as the sole and exclusive sovereign of the Federal District, the entire property, title and estate of the State of Maryland, in and to the soil of the Potomac River within the boundary lines of the said District as definitely located by the President's Proclamation of March 30, 1791; and the United States, as successor to the State of Maryland, thereby became and was seized as of fee of and in the soil of said river up to the high-water mark on the further, southern or Virginia shore thereof.

(*d*) That the Acts of Congress, approved, respectively, June 25, 1910, and February 27, 1911, (referred to in sub-paragraphs "*e*" and "*f*" of Section 1 of the stipulation of January 17, 1916), conferred upon the Secretary of War, full power and authority,
197 acting in that behalf through the Chief of Engineers and the Engineer Officer in charge of the United States Engineer office at Washington, D. C., for the purpose of improving the Potomac River by deepening the channel thereof in accordance with the report submitted in House Document No. 1253, 60th Congress, 2nd. Session, recited in said Act of Congress approved June 25, 1910, to cause a rip-rap wall or revetment to be constructed on the submerged soil constituting the bed of the Potomac River along the edge of the channel and between the points stated in the evidence, and, to cause material dredged from the bed of said river, in the course of deepening the channel thereof, to be deposited on the river bed behind said wall and between the same and the high-water mark of said river, and thereby to cause the submerged soil behind said wall and between the same and the line of ordinary or mean high-water on the right, southern or western shore of said river to be filled in and raised above the water level of said river.

(*e*) That, since the compact made in the year 1785 between Virginia and Maryland was the act of the two States in their character as States, the only parties to the same being the States themselves and not the citizens thereof as such, individually, said compact rested solely upon the mutual agreement of the States in their respective political capacities and was consequently subject, at any and all times, to be modified, changed, or abrogated in any or all of its stipulations by the joint act of the said States, and therefore, did not, and could not, constitute in any sense a grant from the State of Maryland to any individual citizen of the State of Virginia of any
right, title estate or interest in the soil of the Potomac River
198 below the high-water mark thereof and thus within the limits of the State of Maryland.

(*f*) That, when the two sovereign states, which were the sole parties to said compact, and possessed power to alter or abrogate it at their pleasure, ceded the portions of territory respectively belonging to them on the right and left banks of the Potomac River to the United States, in full and absolute right, and exclusive jurisdiction, as well as of soil as of persons, pursuant to the 8th Section of the I Article of the Constitution, the United States, as the single sover-

sign of the two territories thus united in one, displaced both of the contracting parties on whose *mutuus consensus* the compact rested, and said compact was thereby necessarily dissolved and extinguished.

(*g*) That nothing contained in the Act of Congress approved July 9, 1846, (9 Stat. Ch. 35), whereby that portion of the District of Columbia ceded to the United States by the State of Virginia was ceded and relinquished to the said State, operated to renew or recreate, in favor either of Virginia or of the United States, the stipulations of the compact originally made in 1785 by and between the States of Virginia and Maryland.

(6) The court erred on the trial of the general issue joined on the defendant's plea of not guilty, in finding the said general issue in favor of the plaintiff, the United States of America, for the whole of the property and interest claimed in the plaintiff's declaration.

(7) The Court erred in overruling the defendant's motions in arrest of judgment, to set aside the finding of the court on
199 the general issue joined upon the defendant's plea of not guilty and for a new trial.

(8) The court erred in entering judgment, that the plaintiff is entitled to recover against the defendant, the real estate and premises described and claimed in the plaintiff's declaration, in fee simple absolute, and all the rights, easements, privileges, and appurtenances to the same belonging, or in anywise appertaining, and to have thereof the possession against the said defendant.

(9) Other errors appearing on the face of the record.

JAS. R. CATON,
Attorney for Defendant.

Service of a copy of the above Assignment of Errors acknowledged this — day of June, 1919.

HENRY H. GLASSIE,
Attorney for Plaintiff.

Designation of Record.

Filed June 25, 1919.

* * * * * * *

The clerk of said court will please include in the transcript of record on appeal in the above entitled cause, the following:

(1) Declaration filed July 29, 1912.

(2) Plea filed October 1, 1912.

(3) Joinder of issue filed October 15, 1912.

(4) Stipulation filed January 17, 1916.

(5) Stipulation as to defendant's supplemental evidence, file April 21, 1916.

(6) Further stipulation filed November 22, 1916.

(7) Bill of Executions filed November —, 1916.

200 (8) Verdict and judgment on the plea to the jurisdiction

(9) Plea of the general issue.

(10) Joinder in issue.

(11) Stipulation filed May 23, 1919.

(12) Stipulation waiving jury filed May 27, 1919.

(13) Verdict in favor of plaintiff.

(14) The defendant's motion in arrest of judgment & for ne trial.

(15) Judgment.

(16) The designation.

(17) Assignment of Errors.

(18) Stipulation as to exhibits.

JAS. R. CATON,
Attorney for Defendant.

Service of copy of the above designation acknowledged this — day of June, 1919.

HENRY H. GLASSIE,
Attorney for Plaintiff.

Memoranda.

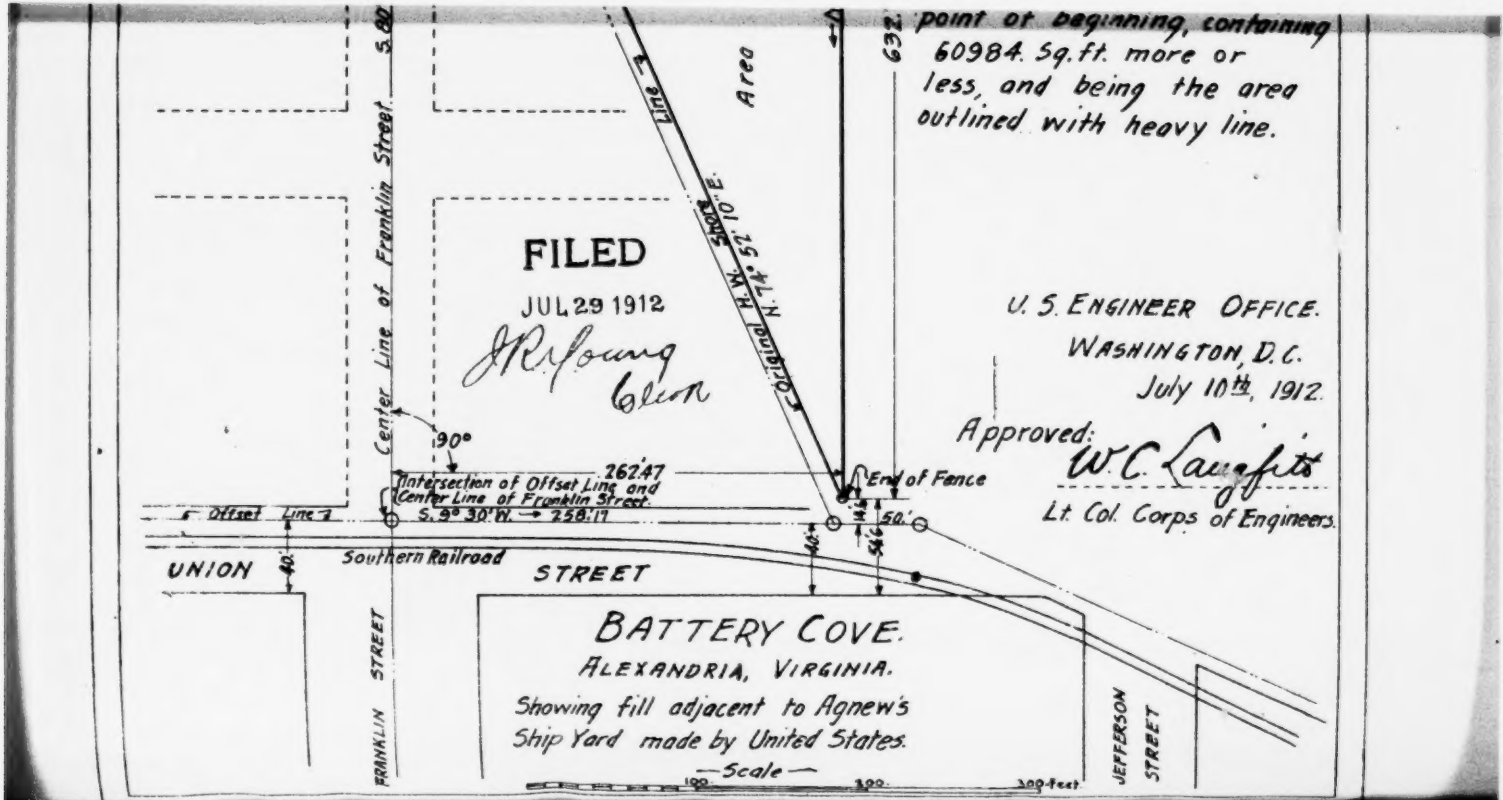
July 1, 1919.—Appeal bond approved and filed.

July 29, 1919.—Time to file transcript of record in Court o Appeals extended to, and including, September 15, 1919.

(Here follow maps marked pp. 201, 202 and 203.)

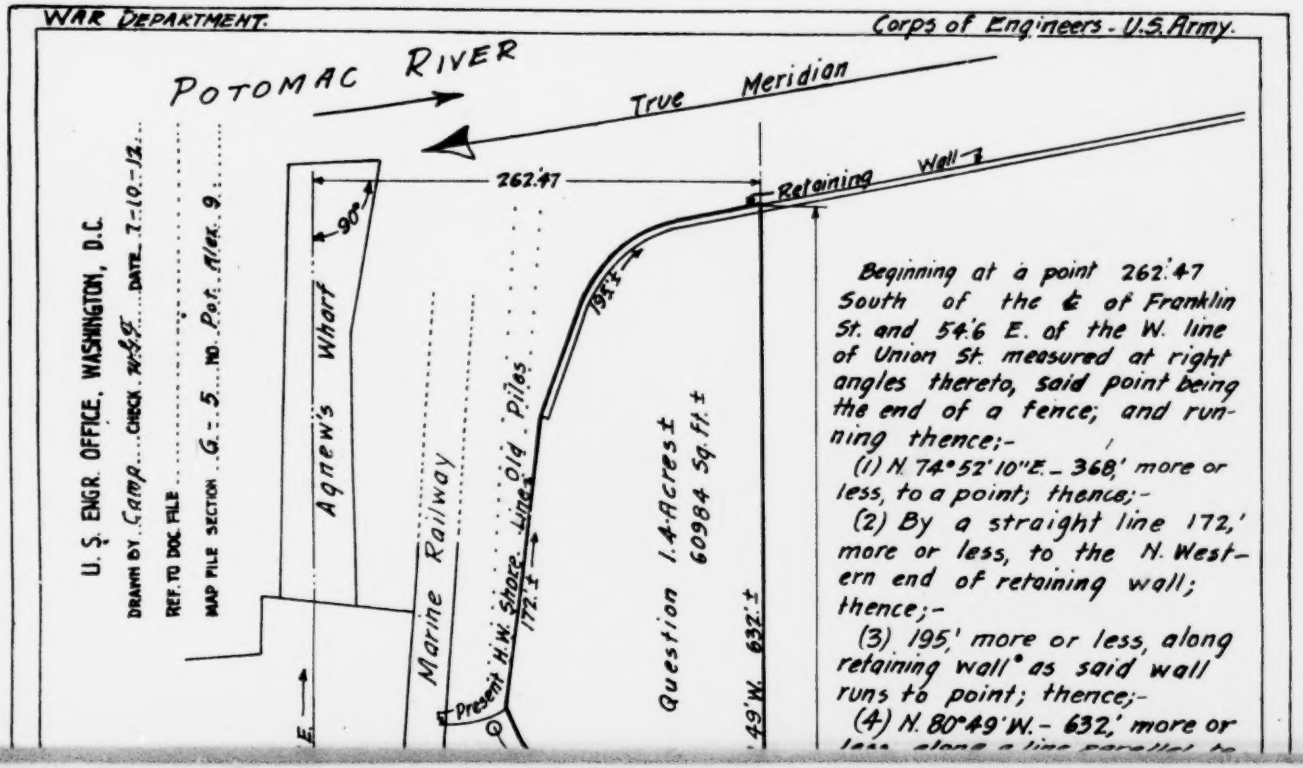
204 Filed July 15, 1919.

At an adjourned session of the United States Circuit Court of th District of Columbia continued and held for the county of Alexan dria the fourth day of March, 1804. This survey and platt, of th lands of John Gill, as laid out and sold by William MacGreery, an


point of beginning, containing
60984. Sq. ft. more or
less, and being the area
outlined with heavy line.
Area
Line
Original H.W. Shore
N. 74° 52' 10" E.
632.
FILED
JUL 29 1912
Clerk
U. S. ENGINEER OFFICE.
WASHINGTON, D.C.
July 10th, 1912.
Approved:
W. C. Langfitt
Lt. Col. Corps of Engineers.
Center Line of Franklin Street
S. 00
90°
Intersection of Offset Line and
Center Line of Franklin Street.
S. 9° 30' W. 258.17
262.47
End of Fence
Offset Line
40'
50'
14.4
54.6
UNION
Southern Railroad
STREET
FRANKLIN STREET
BATTERY COVE.
ALEXANDRIA, VIRGINIA.
Showing fill adjacent to Agnew's
Ship Yard made by United States.
Scale
100
100 Feet
JEFFERSON
STREET

WAR DEPARTMENT.

Corps of Engineers - U.S. Army.



U. S. ENGR. OFFICE, WASHINGTON, D.C.

DRAWN BY Camp ... CHECK. W.S.S. ... DATE 7-10-12 ...

REF. TO DOC. FILE .....

MAP FILE SECTION G-5 ... NO. Pot. Alex. 9 .....

Beginning at a point 262.47 South of the ℄ of Franklin St. and 54.6 E. of the W. line of Union St. measured at right angles thereto, said point being the end of a fence; and running thence;-

(1) N. 74°52'10"E. - 368,' more or less, to a point; thence;-

(2) By a straight line 172,' more or less, to the N. Western end of retaining wall; thence;-

(3) 195,' more or less, along retaining wall as said wall runs to point; thence;-

(4) N. 80°49'W. - 632,' more or

MAPS

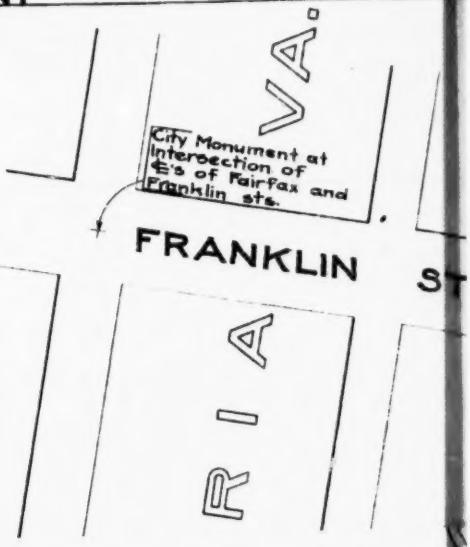
TOO

LARGE

FOR

FILMING

WAR DEPARTMENT



FILED

JUL 15 1919

J. R. Young
Clerk

Sta. 20+49

BATTERY COVE
POTOMAC RIVER
AT ALEXANDRIA, VA.

SCALE OF FEET.

100 50 0 100 200 300 400 500

Showing Metes and Bounds between the Reclaimed Land of Battery Cove and the main fast shore.

NOTE

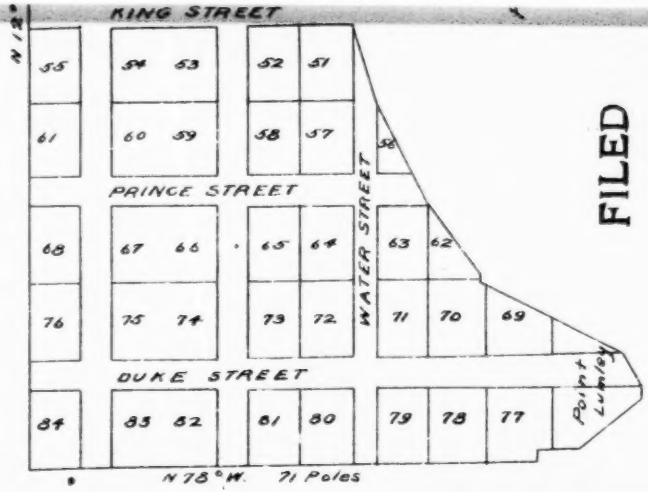
Mean Low Water shore line
" High " " " (3ft. above M.L.W.)
8 ft. Contour (8ft. above M.L.W.)
High water shore line of 1843 sketched in from map by Maskell C. Ewing, C.E., in City Engineer's Office, Alexandria, Va.
Ground elevations indicate height above mean low water in feet and tenths.
Bench Mark, elevation 6.21 above M.L.W. is galvanized nail in root of large sycamore tree on outer upstream end of Jones Point.
Survey of 1912.

Revised Nov. 30 1917 to show acreage of reclaimed area

Camp Church

B-64-3

A Plan of



FILED
JUL 15 1919

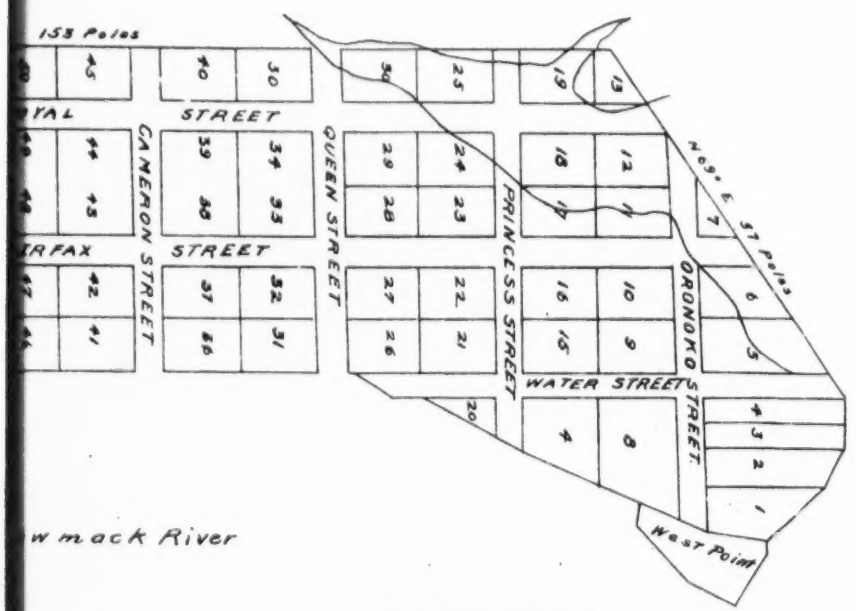
For Date of Survey see Copy of Record attached

Town of Alexandria, Va. William Payne the surveyor of Fairfax County is requested in conjunction with George Gilpin and Thomas in Ellrey to have the original plan of the town of Alexandria inserted in the record book for the Corporation and town aforesaid together with minutes of the survey relative to the said town

Done in Council the 30th November 1796.

Oliver Price, Clerk of the Council.

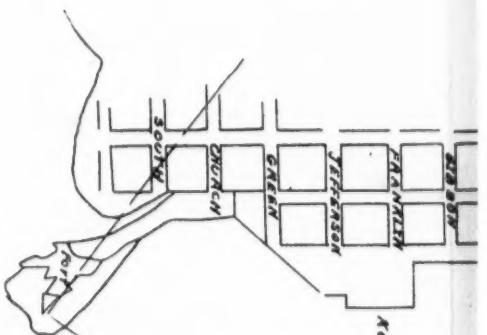
DBH-332



At Law. 54872.
United States of America,
v.
Marine Railway & Coal Co.
Exhibit 1.

For Date of Survey see Copy of Record attached

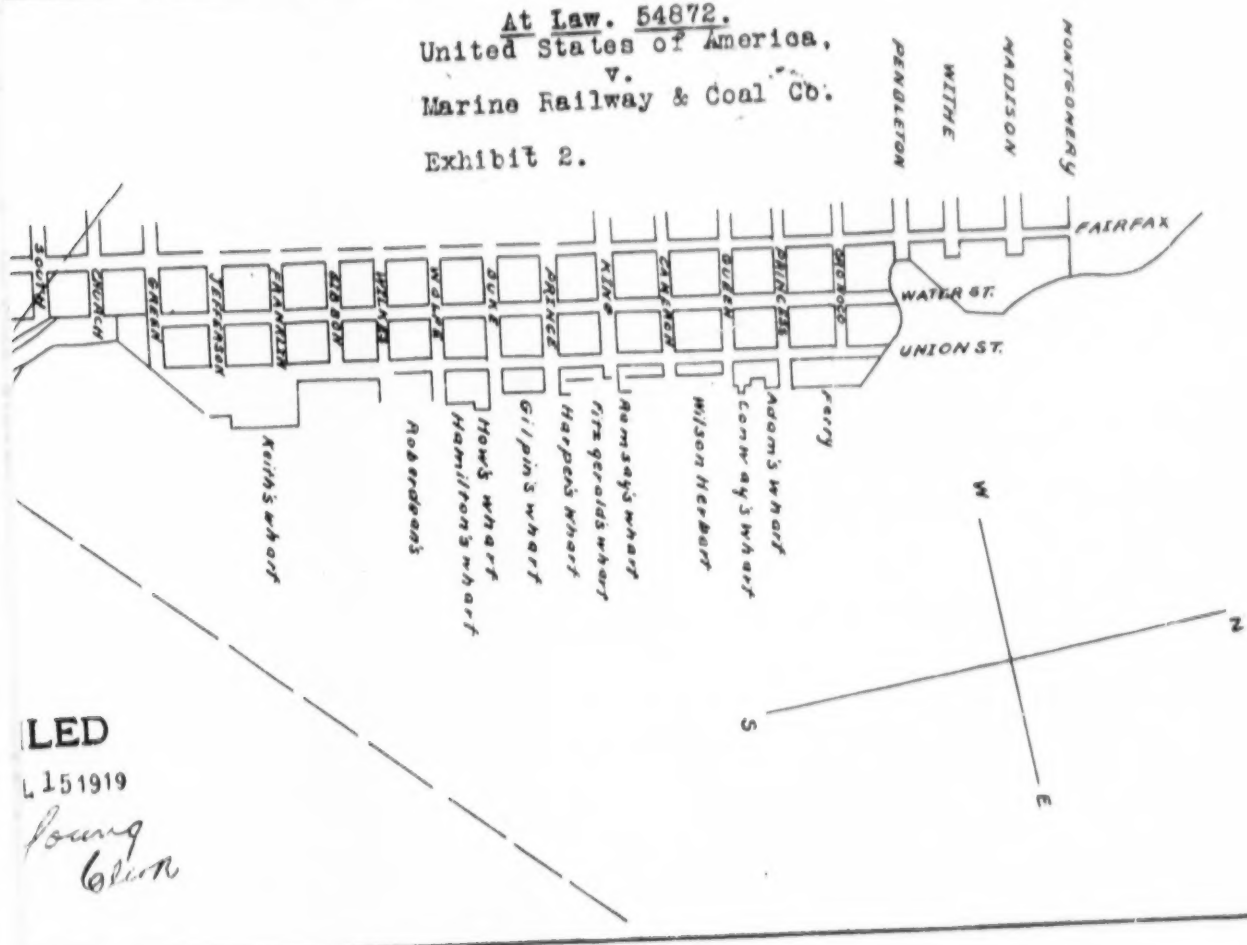
A plan of Alexandria in the Territory of Columbia State of Virginia. Recorded in Deed Book G-264



FILED
JUL 15 1919
J R Young
Clerk

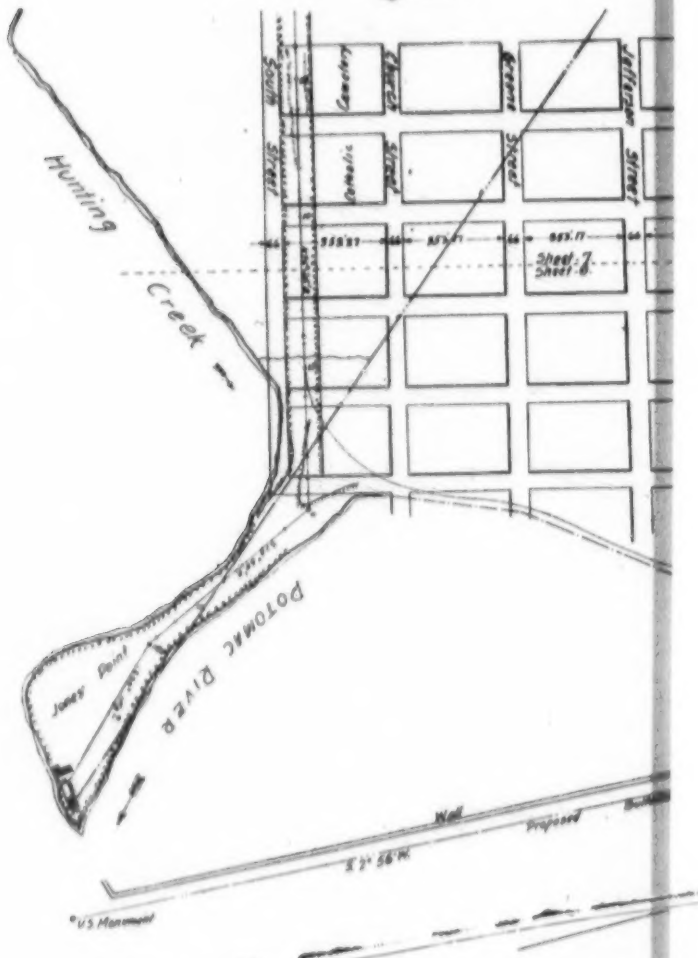
At Law. 54872.
United States of America,
v.
Marine Railway & Coal Co.

Exhibit 2.



FILED
JUL 15 1919
Young Clerk

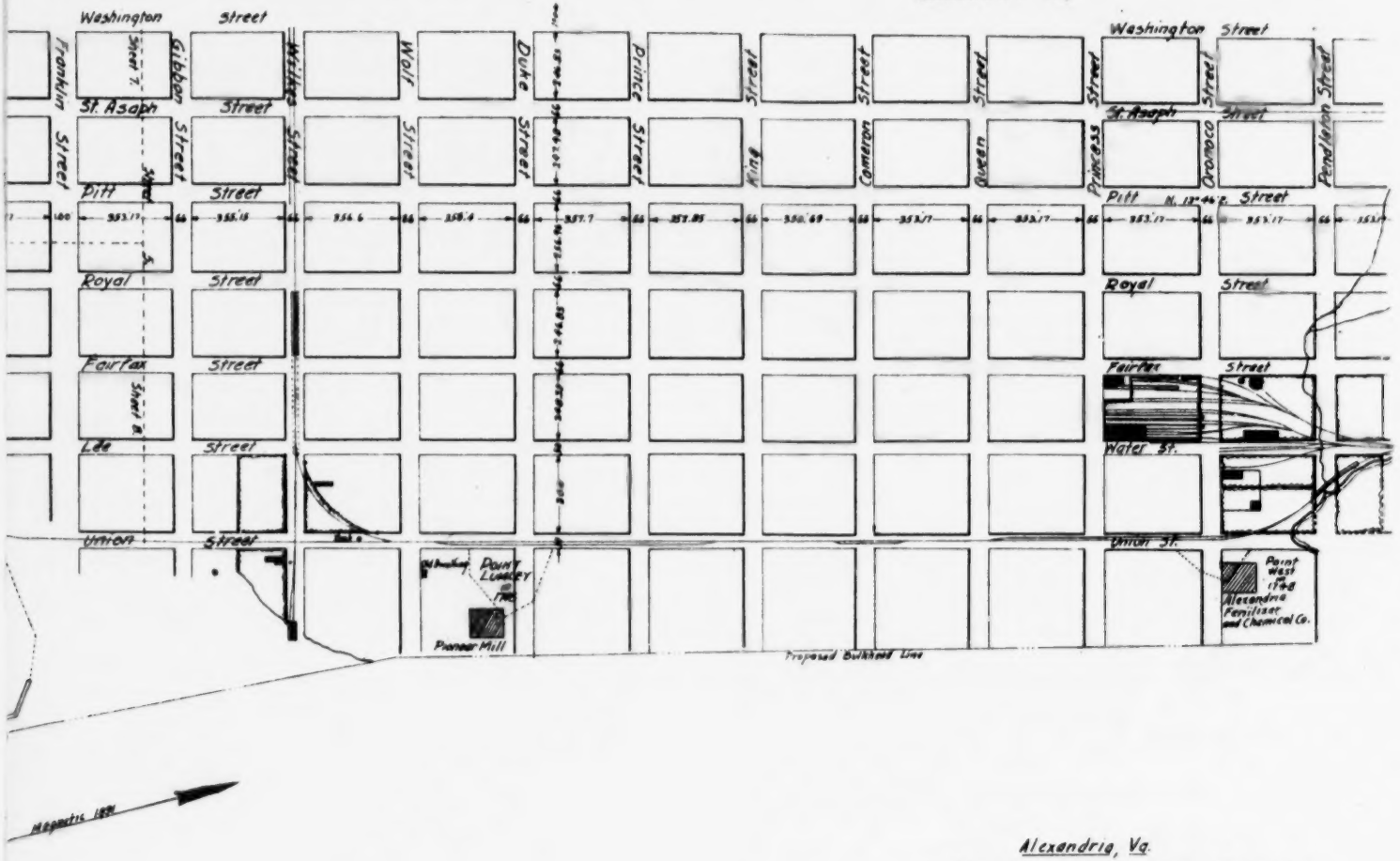
FILED
JUL 15 1919
J. R. Young
Clerk



Office of Chief Engineer,
Richmond and Potomac R. R.

At Law. 54872.
United States of America,
v.
Marine Railway & Coal Co.

Exhibit 3.



Alexandria, Va.
JONES POINT, POINT LUMLEY, POINT WEST
Scale: 1 inch = 300 feet.

James H. Hooe, assignees under a commission of bankruptcy, was presented in court and on motion ordered to be recorded.

Test:
G. DENEALE, *C. C.*

Examined.

(Here follow maps marked pages 205 and 206.)

207 EXHIBIT 4.

Filed July 15, 1919.

House of Representatives.

Document No. 1253.

Potomac River at Alexandria, Va.

Letter from the Secretary of War Transmitting, with the Letter from the Chief of Engineers, Reports of Examination and Survey of Potomac River at Alexandria, Va.

December 19, 1908.—Referred to the Committee on Rivers and Harbors and ordered to be printed, with illustration.

War Department,
WASHINGTON, December 18, 1908.

SIR:

I have the honor to transmit herewith a letter from the Chief of Engineers, U. S. Army, of this date, together with copies of reports from Maj. Spencer Cosby, Corps of Engineers, dated July 26, 1907, and October 14, 1908, with map, of a preliminary examination and survey, respectively, of Potomac River at Alexandria, Va., made by him in compliance with the provisions of the river and harbor act of March 2, 1907.

Very respectfully,

LUKE E. WRIGHT,
Secretary of War.

The Speaker of the House of Representatives.

War Department,
Office of the Chief of Engineers,
WASHINGTON, December 18, 1908.

SIR:

208 I have the honor to submit herewith, for transmission to Congress, reports of July 26, 1907, and October 14, 1908,

with map, by Maj. Spencer Cosby, Corps of Engineers, on preliminary examination and survey, respectively, provided for by the river and harbor act of March 2, 1907, of Potomac River at Alexandria, Va., with a view to the removal of a bar recently formed.

Work of improving Potomac River has secured a channel 24 feet deep and 200 feet wide through all shoal places obstructing 24-foot navigation below Washington, D. C. The estimated cost of the dredging necessary to afford a depth of 24 feet at mean low water over the area in front of the city of Alexandria, between deep water of the through channel and a line drawn 20 feet outside of a proposed pierhead line, is $116,000, with an additional charge of about $2,000 a year for maintenance, and, in the opinion of the local officer, this improvement is worthy of being undertaken by the General Government.

In his indorsement of November 18, 1908, on the subject, the division engineer, Col. D. W. Lockwood, Corps of Engineers, recommends dredging to the depth of 24 feet in front of the existing wharves only.

The matter has been referred, as required by law, for consideration by the Board of Engineers for Rivers and Harbors, and attention is respectfully invited to the Board's report of the 1st instant (also herewith), in which it concurs in the opinion of the district officer that the locality is worthy of improvement to the full extent estimated for ($116,000).

The views of the Board meet with the approval of the Chief of Engineers.

Very respectfully,

W. L. MARSHALL,
Chief of Engineers, U. S. Army.

The Secretary of War.

209 *Preliminary Examination of Potomac River at Alexandria, Va.*

United States Engineer Office,

Washington, D. C., July 26, 1907.

Sir:

In accordance with instructions from the Chief of Engineers, I have the honor to submit the following report of a preliminary examination of "Potomac River at Alexandria, with a view to the removal of a bar recently formed," made in compliance with the requirements of the river and harbor act of March 2, 1907.

The detailed examination was made May 16, 1907, by Mr. F. C. Warman, assistant engineer, under this office. On that day he held at Alexandria a hearing, which had been arranged by appointment with the secretary of the chamber of commerce of that city. Twelve prominent business men and members of the harbor committee of the chamber of commerce were present and evinced the greatest in-

terest in the proposed improvement. A brief examination of the locality was made by me on July 21, 1907.

The following data are derived chiefly from Mr. Warner's report:

General Description of Locality.

The city of Alexandria is situated on the right bank of the Potomac about 5 miles below the steamboat wharves at Washington, D. C. It is one of the oldest cities in the United States and has long been a port of entry. Bills of lading dating back to 1732 are in existence, but it had been established as a port prior to that.

The river front of Alexandria is solidly built up for a length of nearly a mile with wharves that are generally in good repair and much used, though a few have been abandoned and are in
210 dilapidated condition.

The present population of Alexandria is nearly 20,000, and is said to be increasing.

The city contains about 400 mercantile and industrial establishments. Two marine railways, one of them the largest on the river, are located at Alexandria, and about 100 vessels of various kinds and sizes hail from this port.

At least five different lines of railroad pass through Alexandria, and tracks skirt the wharf front, forming the only direct rail and water connections of any importance on the Potomac. No such connection exists at Washington, save for a coal tipple recently established on the Anacostia. Shepherds Landing, opposite Alexandria, is used almost exclusively in connection with the lines at Alexandria. The former railroad terminals at Popes Creek, Quantico Creek, and Aquia Creek have been abandoned. As a result, it is claimed that most of the water-rail shipments of Washington are handled at Alexandria, while the shipments to and from the country extending inland from 50 to 75 miles are largely made from that port.

The mean range of tides at Alexandria is about 2.8 feet.

Obstruction to Navigation.

It is stated by those familiar with the locality that up to twenty years ago the main current of the Potomac was deflected from the opposite Maryland shore above Shepherds Landing and ran close in front of the wharves at Alexandria, maintaining a depth of 20 feet or more along the entire wharf front. This course of the current had been frequently observed by its action upon floating objects.

During the great freshet of June, 1889, an old Hudson River steamboat about 300 feet long, which had been converted
211 into a barge, was sunk off the outlet locks of the Chesapeake and Ohio Canal, at the upper end of the Alexandria wharf front. This wreck intercepted the current, which had hitherto swept past the city front, and deflected it toward the opposite shore, with the result that a bar of soft mud has been gradually formed until the depth of water in front of the upper wharves has

become too shallow for commercial purposes and the effect of the shoal is beginning to be felt even at the lower end.

The large-scale Coast and Geodetic Survey chart, made from the survey of 1863, shows that deep water at that time existed close up to the wharves, while the Coast and Geodetic Survey chart made from the latest survey, that of 1904, shows a marked shoaling immediately in front of the wharves and a decided movement of the hydrographic contours away from the city to the eastward. Soundings taken at the time of the examination show a depth of 6 feet at low tide at the north (upstream) end of the bar off the canal outlet, 7 feet about 200 feet below that point, gradually deepening to 10 feet off the Alexandria Fertilizer and Chemical Company's wharf (2,000 feet below the canal outlet), continuing at a depth of 10 to 11 feet for about 1,000 feet, and then gradually increasing to from 20 to 24 feet at the Southern Railway ferry slip, at the southern end of the wharf front. The width of the shoal is about 400 or 500 feet at the upper end and gradually decreases to zero at the lower end of the wharf front.

In recent years the wharf owners have repeatedly and at considerable expense dredged channels across this bar to the deep water in the main river, but these cuts afford only temporary relief and are soon obliterated. As the shoal is reported to be still rapidly increasing it is feared that unless some radical improvement
212 is undertaken at an early date the entire water front of Alexandria will be seriously obstructed if not rendered practically useless.

Improvement Desired.

The wharves most affected are those at the north end of the wharf front. Many of the vessels at present using these wharves draw from 18 to 22 feet of water. The private owners in dredging cuts through the bar to their wharves have made the depths as follows: Mr. W. A. Smoot, 24 feet; The Alexandria Fertilizer and Chemical Company, 22 feet; and Mr. William M. Reardon, 20 feet, all at low tide.

The request is made that the shoal be removed to a depth of 24 feet at low tide from the port warden line out to the deep-water channel of the river, that the wreck which is primarily responsible for the formation of the shoal be removed, and that if practicable deflection works be constructed to insure the return of the current to the Alexandria side of the river.

The port warden line is a line established by the local authorities and drawn somewhat outside the general line of the heads of the present wharves. It was established for the same purpose as the "wharf line" as understood by the War Department. The depth of 24 feet which is requested is now the ruling depth in the lower Potomac.

With suitable current deflection works it is thought that the improvement should be reasonably permanent and require but little redredging.

Commerce, Past and Present.

At a time antedating this area of extensive shipment by railroads Alexandria was an important shipping point and ranked with the leading ports of the South. The railroads at first took away
213 considerable of the business of the harbor, but in the past few years this has been steadily increasing, though the city has never fully regained its former importance as a port.

Statistics of trade for the calendar year 1906 have been carefully compiled by Mr. J. T. Preston, secretary of the chamber of commerce, and are believed to be substantially correct. They show a total of receipts of 190,661 tons, valued at $1,890,545, and a total of shipments of 87,768 tons, valued at $1,226,106, exclusive of the teams and vehicles transported by the Washington and Alexandria ferry line. The principal articles of commerce are coal, fertilizer, glass bottles, ice, lumber, oil, phosphate rock, railroad ties, sand, wholesale groceries, and general merchandise. It is stated that a few years ago Alexandria was the sixth sugar market in the United States.

The trade is carried on principally with Washington, Baltimore, Norfolk, New York, Boston, Maine ports, Nova Scotia, and Florida, though there is said to be a considerable trade with Brazil, Argentina, and Spain.

There are 6 regular lines of steamers stopping at Alexandria, and during the year 1906 their boats made 8,462 calls. The total number of arrivals of vessels of all lines during 1906 was 12,473, of which 425 drew over 16 feet of water; most of these latter drew from 19 to 22 feet.

The total number of passengers carried by vessels of all kinds during 1906 was 504,975.

It is stated that the railroad rates are much affected by the water rates, as this is a shipping point at which competition is
214 practicable.

Prospective Commerce and Benefits Anticipated.

The existence and growth of the shoal in front of the city has already compelled a slight decrease in the size of vessels used, and the uncertainty as to the ultimate result of the shoaling has caused owners of water-front property to hesitate to improve it.

The removal of the shoal would relieve this uncertainty, would permit the use of larger vessels, would probably decrease freight rates, and place a large number of vessels at the command of the shippers (the number of small vessels is decreasing year by year), and would place the city in better position to compete with other shipping points. An increase in its water business would probably result.

The residents feel that prompt relief is of vital importance to the welfare of the community.

Conclusions.

In view of the importance of the city of Alexandria, of the extent of its commerce, and of the conditions above stated, the removal of the bar recently formed is regarded as an improvement worthy to be undertaken by the General Government.

It is thought that the establishment of harbor lines should be included in this improvement.

The estimated cost of a survey of the locality is $350.

Very respectfully,

SPENCER COSBY,
Major, Corps of Engineers.

The Chief of Engineers, U. S. Army. (Through the Division Engineer.)

(*First Indorsement.*)

U. S. Engineer Office, Eastern Division.

NEW YORK CITY, July 30, 1907.

Respectfully forwarded to the Chief of Engineers, U. S.
215 Army, concurring in the views and recommendation of the district officer.

D. W. LOCKWOOD,
Colonel, Corps of Engineers, Division Engineer.

(*Third Indorsement.*)

Board of Engineers for Rivers and Harbors.

WASHINGTON, D. C., August 12, 1907.

Respectfully returned to the Chief of Engineers, U. S. Army.

The improvement desired at Alexandria is, as indicatd by the act, "the removal of a bar recently formed." It appears that prior to 1889 the main current of the Potomac River skirted quite closely the entire wharf front of the city of Alexandria, maintaining a depth of 20 feet or more, and that in June of that year a large vessel sank near the upper wharf, resulting in a division of the current, which gradually caused a fill along the upper part of the city front, which in recent years has been extending downward until its influence is now felt over the entire wharf frontage. Private interests, at considerable expense, have dredged channels through the bar with depths ranging from 20 to 24 feet, but owing to natural causes these channels have rapidly filled. It is desired that the bar be removed to a depth of 24 feet, corresponding to the ruling depth below the city of Washington and as provided for under the existing project for the improvement of the Potomac River, and in connection with

his work the removal of the wreck which it is believed is the primary
use of the formation of the bar.

It is stated that our of a total number of 12,473 vessels arriving
the city of Alexandria during 1906, 425 drew over 16 feet of
water, and most of these had a draft of from 19 to 22 feet.
16 The city of Alexandria, while one of the oldest, is also one
of the most important on the Potomac, and its shipping inter-
sts are considerable. Its commerce is reported within to amount to
bout 278,429 tons, valued at $3,116,651. The total commerce of
he Potomac River is reported as 1,476,500 tons. It therefore appears
hat the commerce of Alexandria is about 19 per cent of the total
ommerce of the Potomac River.

Believing that the interests involved are sufficient to warrant a
oderate expenditure at this locality, the Board concurs with the
istrict officer and the division engineer in recommending that a
urvey be made with a view to ascertaining the cost of the proposed
nprovement, which is desired before arriving at a final conclusion
s to the advisability of the United States undertaking the work.

For the Board.

D. W. LOCKWOOD,
Colonel, Corps of Engineers,
Senior Member of the Board

(*Fourth Indorsement*)

War Department,

Office of the Chief of Engineers.

WASHINGTON, August 15, 1907.

Respectfully submitted to the Secretary of War.

This is a report on preliminary examination of Potomac River at
lexandria, Va., authorized by the river and harbor act of March 2,
1907.

Inviting attention to the report of the Board of Engineers for
River and Harbors in the preceding indorsement, I recommend that
survey of the locality, as proposed, be authorized.

A. MACKENZIE,
Brig. Gen., Chief of Engineers, U. S. Army.

17 (*Fifth Indorsement.*)

War Department,

August 16, 1907.

Approved as recommended by the Chief of Engineers.

ROBERT SHAW OLIVER.
Assistant Secretary of War.

Survey of Potomac River at Alexandria, Va.

United States Engineer Office.

WASHINGTON, D. C., October 14, 1908.

SIR:

As directed by Department letter of August 20, 1907, I have the honor to submit the following report of a survey of the Potomac River at Alexandria, Va., together with a plan and estimate of cost of the removal of the bar in front of the city.

The survey was made in November, 1907, and in March, 1908, by Mr. William B. Harrison, assistant engineer. From the survey a map of the locality has been prepared, a copy of which is forwarded herewith.

The general condition and needs of the locality were described in my report upon the preliminary examination. No additional information besides that shown upon the map was obtained at the time of the survey.

In accordance with recommendation of the Board of Engineers for Rivers and Harbors, the wreck which was reported as lying in the river just above the wharves has been removed, the work having been completed on August 6, 1908.

On October 1, 1908, a report was submitted to the Secretary of War proposing the establishment of harbor lines at Alexandria. The proposed lines are indicated upon the inclosed map.

On October 6, 1908, soundings were made in front of the
218 proposed pierhead line to ascertain whether the removal of the wreck had produced any perceptible effect on the depth. It was ascertained that if anything the depths now existing are slightly less than when the survey of the same area was made in November, 1907; the shoaling, however, is very slight.

Following is the estimated cost of the work required to afford a depth of 24 feet at mean low tide over the area in front of the city, between the existing 24-foot contour and a line drawn 20 feet outside the pierhead line, the area being indicated by hatching upon the accompanying map:

Dredging 673,000 cubic yards, at 15 cents	$100,950
Contingencies, engineering, etc	15,050
Total	116,000

A rough estimate of cost of maintenance is that it will amount to $4,000 every four years, but it is difficult to fix on a basis for even approximate figures in this matter.

Most of the excavated material can be deposited upon the flats on the Maryland side of the river. This would aid in deflecting the current toward the Alexandria wharf front, though it is possible that a deflecting dike on the Maryland side, above Shepherds Point, may ultimately be found desirable in order to reduce the cost of maintenance.

I am of the opinion, based upon the results of the survey and consideration of the important commercial and other interests involved, as stated in my report of the preliminary examination, that the removal of the bar in the Potomac River at Alexandria to such an extent as is necessary to afford a depth of 24 feet at low tide along the wharf front of that city is an improvement worthy to be undertaken by the Government.

Very respectfully,

SPENCER COSBY,
Major, Corps of Engineers.

The Chief of Engineers, U. S. Army. (Through the Division Engineer.)

219 (*First Indorsement.*)

U. S. Engineer Office, Eastern Division.

NEW YORK CITY, November 18, 1908.

Respectfully returned to the Chief of Engineers, U. S. Army.

Dredging in front of the existing wharves, at least to the extent of opening up a sufficient 24-foot area to provide for existing and prospective commerce, is recommended.

D. W. LOCKWOOD,
Colonel, Corps of Engineers, Division Engineer.

(*Third Indorsement.*)

Board of Engineers for Rivers and Harbors.

WASHINGTON, D. C., December 1, 1908.

Respectfully returned to the Chief of Engineers, U. S. Army.

In the report of the district officer on the preliminary examination of this locality, it was explained that in recent years the channel in front of Alexandria has been gradually shoaling, due, it was claimed, to injurious influence of a sunken large at the northern end of the harbor, which deflected the current to the eastward. By direction of the Chief of Engineers, U. S. Army, this wreck was recently removed by the district officer, and progress is well advanced toward the establishment of harbor lines which were deemed desirable in the formulation of a plan of improvement.

The work now to be considered is the formation of a channel accessible to the wharves of dimensions suitable to the needs of commerce. The proper depth is indicated by the project for the improvement of Potomac River below Washington, which contem-
220 plates a channel 24 feet deep at mean low water. The cost of dredging such a channel in front of the city of Alexandria is estimated by the district officer at $116,000, with an annual cost of maintenance of about $2,000. Based upon the results of the survey and a consideration of the important commercial and other interests involved, the district officer expresses the opinion that this

work is worthy to be undertaken by the Government. The Board concurs in this opinion.

For the Board:

JOHN G. D. KNIGHT,
Colonel, Corps of Engineers, Senior Member Present.

(Here follows maps marked page 221.)

222 Filed July 15, 1919.

303 Durham Loan & Trust Bldg.,
Durham, N. C., October 2, 1912.

Mr. B. Herman, Chief Engineer M. W.

DEAR SIR:

In reply to your letter of the 1st, Point Lumley has been located on the United States map enclosed, from the information obtained from (No. 1) of letter to you of September 16th, plan of Alexandria town 1748.

The United States bulk head line (colored yellow) on the map I enclose is parallel to a line run from the extreme end of Jones Point to the extreme end of Point Lumley, but from 50 feet to 75 feet outside of such a line.

The wall recently built follows very closely a line which can be drawn from Jones Point to Point Lumley, as they originally stood.

The old marks of Point Lumley are destroyed, and the present low water mark of Point Lumley is the water front of the Pioneer Mill, and altogether artificial in my opinion.

The wall recently built by the United States Government follows the present low water line closely, and this is shown by the soundings on the map.

The larger scale blue prints handed you September 16th agree with the United States map.

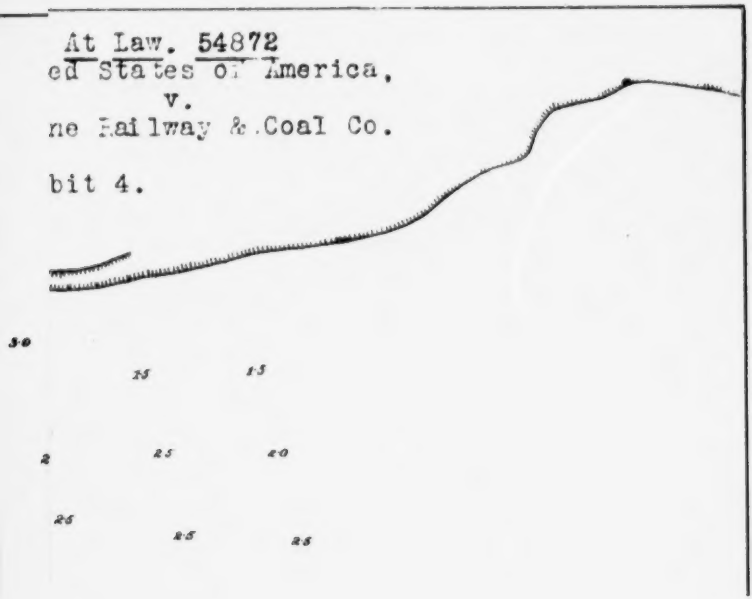
Yours truly,

H. GORDON,
Assistant Engineer.

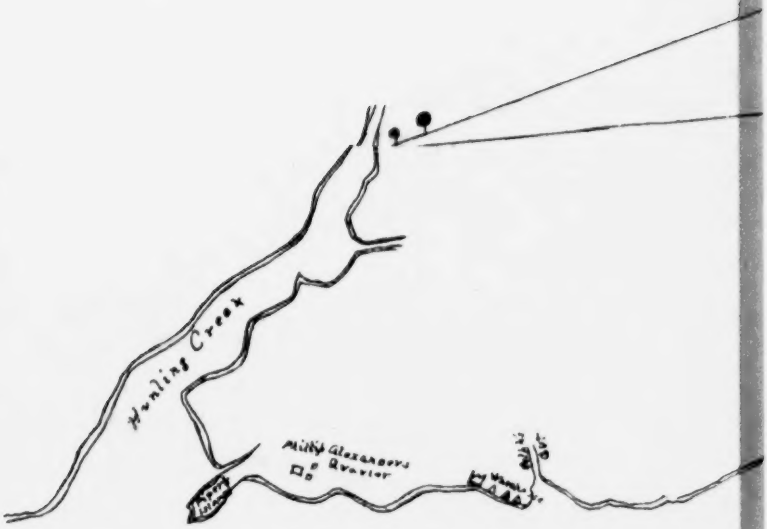
(Here follow maps and certificates marked pages 223 to 237, inc.)

At Law. 54872
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v.
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bit 4.

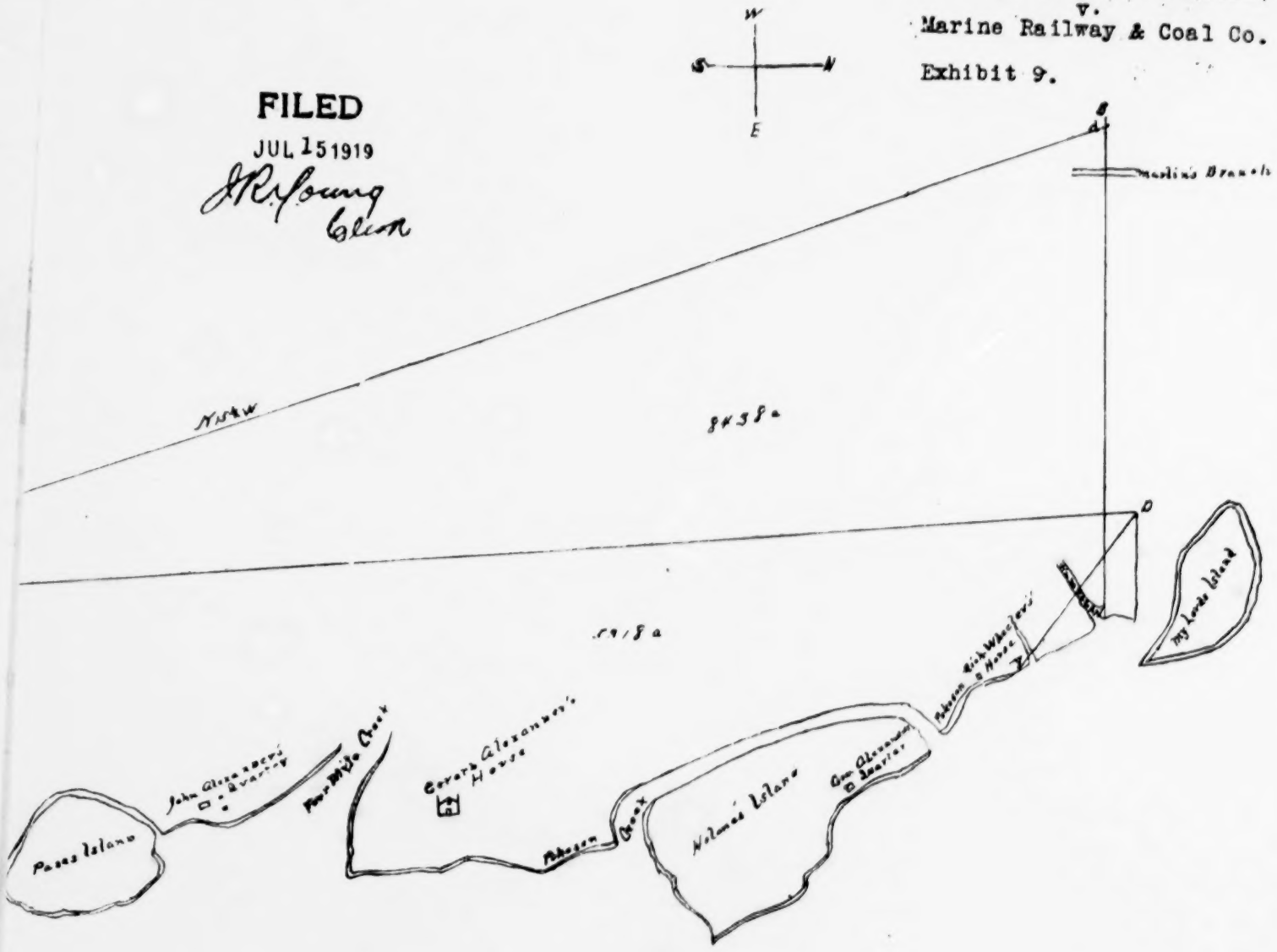


MAPS
TOO
LARGE
FOR
FILMING


Hawling Creek
Milky Glassbarrow
Barrow

United States of America,
v.
Marine Railway & Coal Co.
Exhibit 9.

FILED
JUL 15 1919
J. R. Young
Clerk

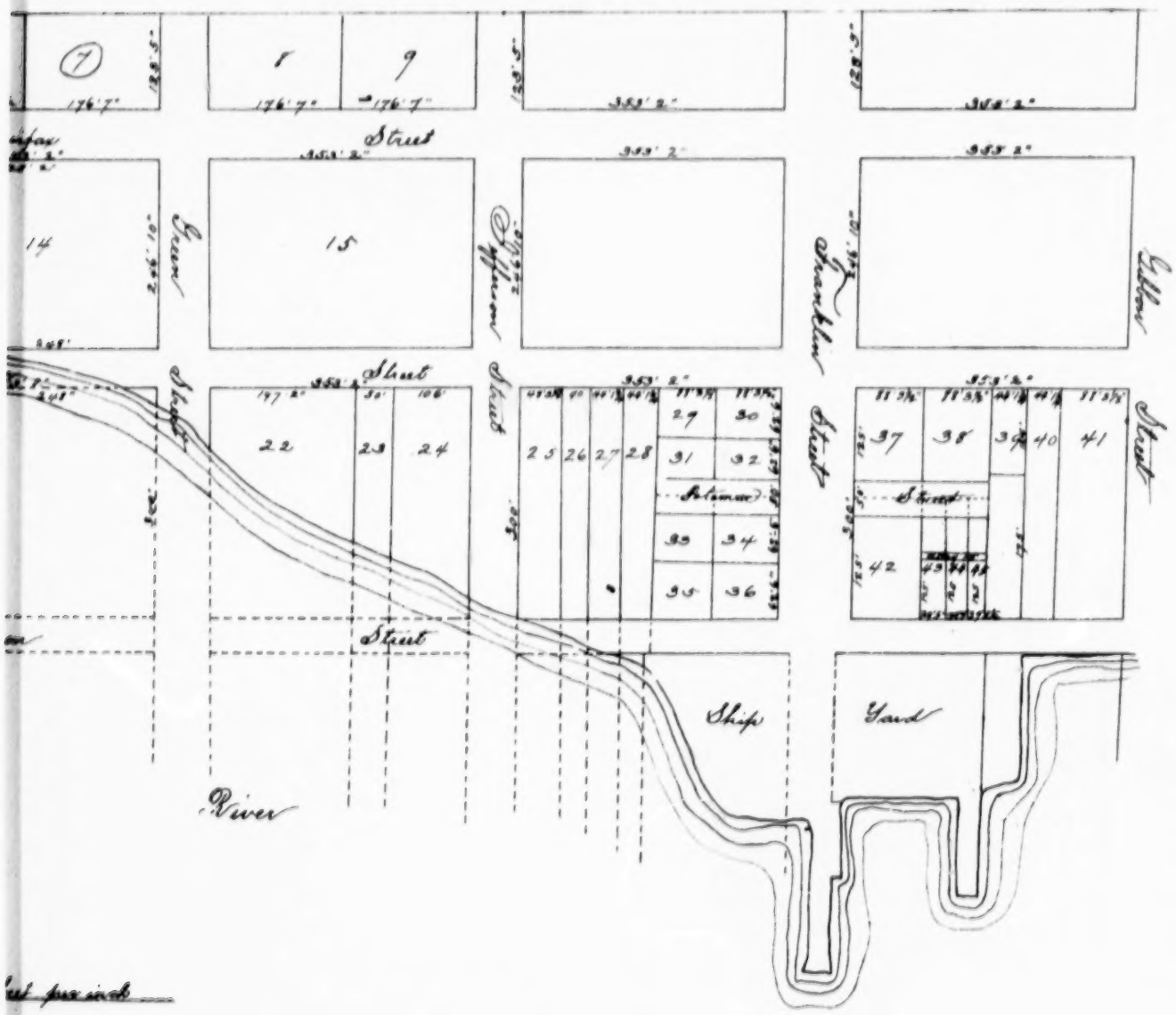


Hunting Creek
Alexandria Canal
Orchard Point
Locust Point
46
Prepared by
James R. Caton
Atty. at Law
Alexandria, Va.
July 5/16.

FILED

JUL 15 1919

J. R. Young
Clerk



1 A. S. Yeaton
2 A. A. Cayouette et al.
3 A. S. Yeaton
4 A. A. Cayouette et al.
5 A. S. Yeaton
6 A. A. Cayouette et al.
7 John C. Hill et al. Trustees of M. E. Church
8 Edgar Seaverdale
9 John C. Hill et al. Trustees of M. E. Church
10 Edgar Seaverdale
11 Henry Hardesty
12 Caroline M. Evans et al.
13 A. C. Cayouette et al.
14 Cecil's Dames et al. heirs
15 Samuel English
16 Cayouette et al.
17 Andrew S. Mann
18 Caroline M. Evans et al.
19 Henry Hardesty
20 A. A. Cayouette
21 A. S. Yeaton
22 H. H. Swain's Daughters
23 James Cecil et al.
24 H. H. Swain's Daughters
25 A. A. Cayouette et al.
26 Samuel C. English
27 R. H. Lambert et al.
28 " " "
29 John Baptist Sweet
30 Mary E. Keith
31 Louis Pomatto et al.
32 " " "
33 Jno. P. Agnew & Co.
34 " " "
35 " " "
36 " " "
37 Edgar Seaverdale Est.
38 Jno. P. Agnew & Co.
39 D. M. Reynolds et al.
40 " " "
41 Jno. W. Green
42 Mary Keith et al.
43 Jane Daniels et al.
44 Jno. P. Agnew & Co.
45 " " "
46 Manassas Gap R. R. Co.
47 Edgar Seaverdale

Cut per inch

FILED
JUL 15 1919
J. R. Young
Clerk

At Law. 54872.
United States of America,
v.
Marine Railway & Coal Co.

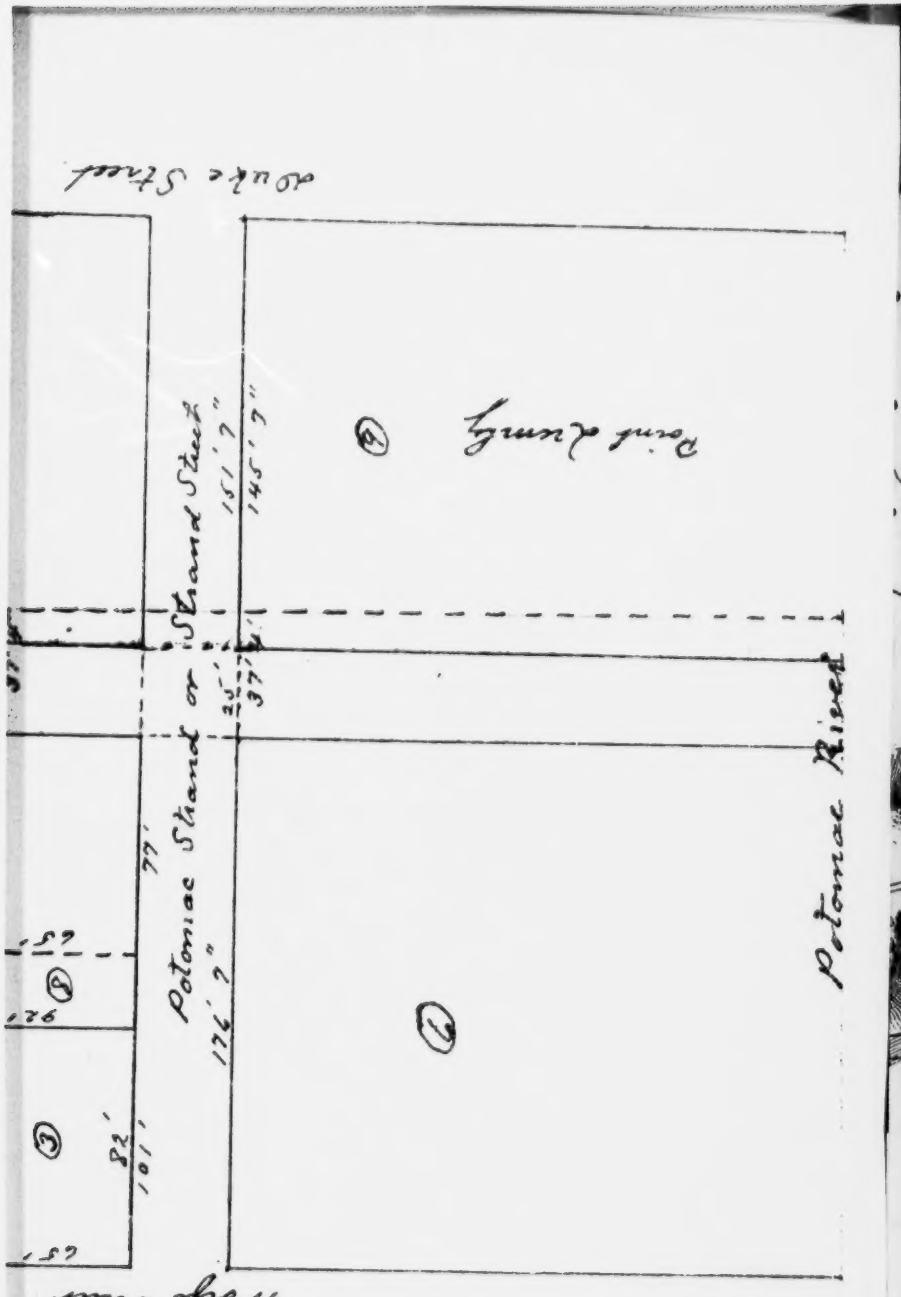
Exhibit 12.

Plat No. 2 Abstr. No 2. The black lines, letters & figures show the original lines & divisions & the red lines and figures show the subsequent lines & divisions of property



At Law. 54872.
United States of America,
v.
Marine Railway & Coal Co.

Exhibit 13.



HUNTING CREEK
ALEXANDRIA
JONES POINT

At Law. 54872.
United States of America,
v.
Marine Railway & Coal Co.
Exhibit 13.

FILED
JUL 15 1919
J. R. Young
Clerk

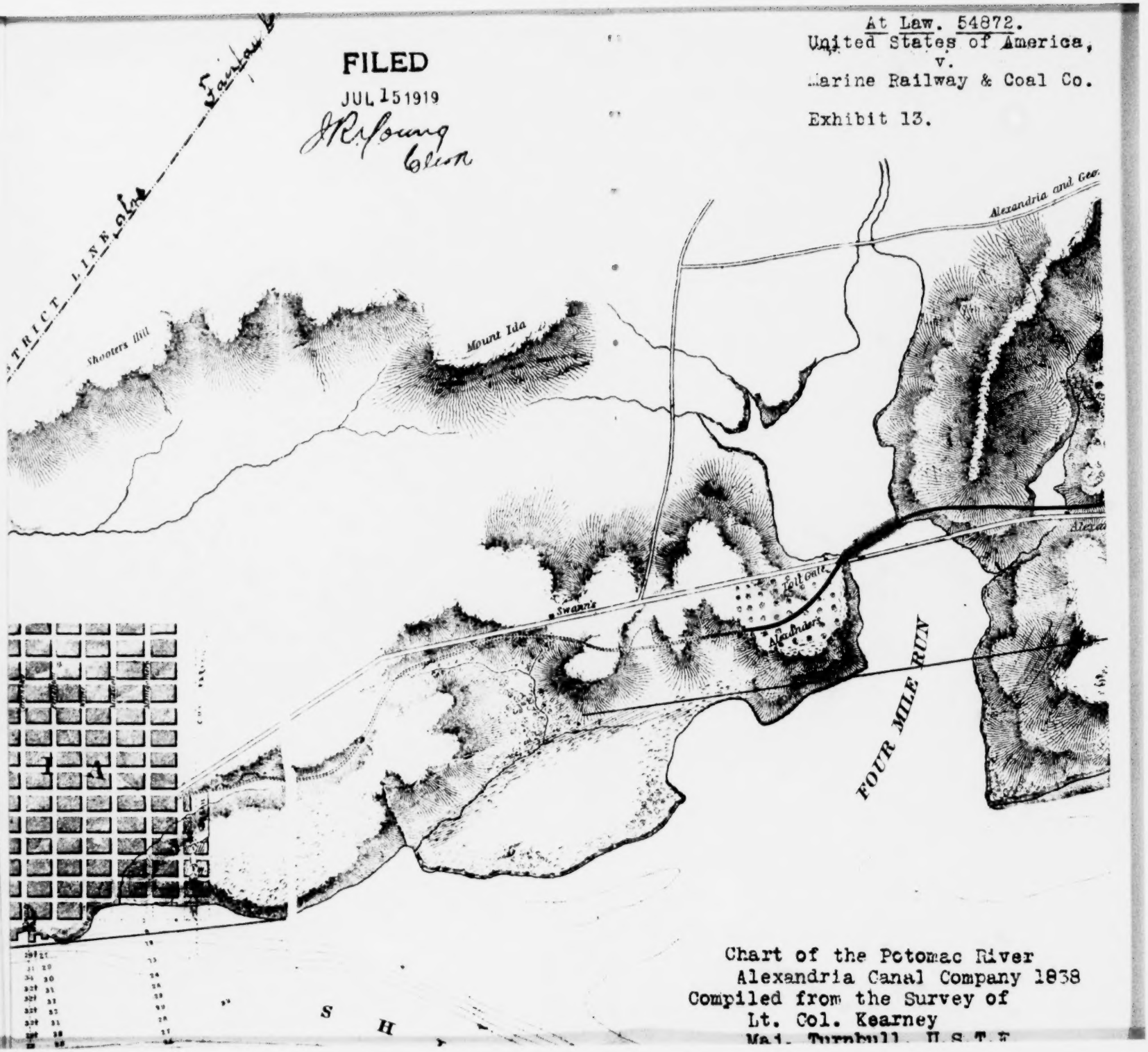


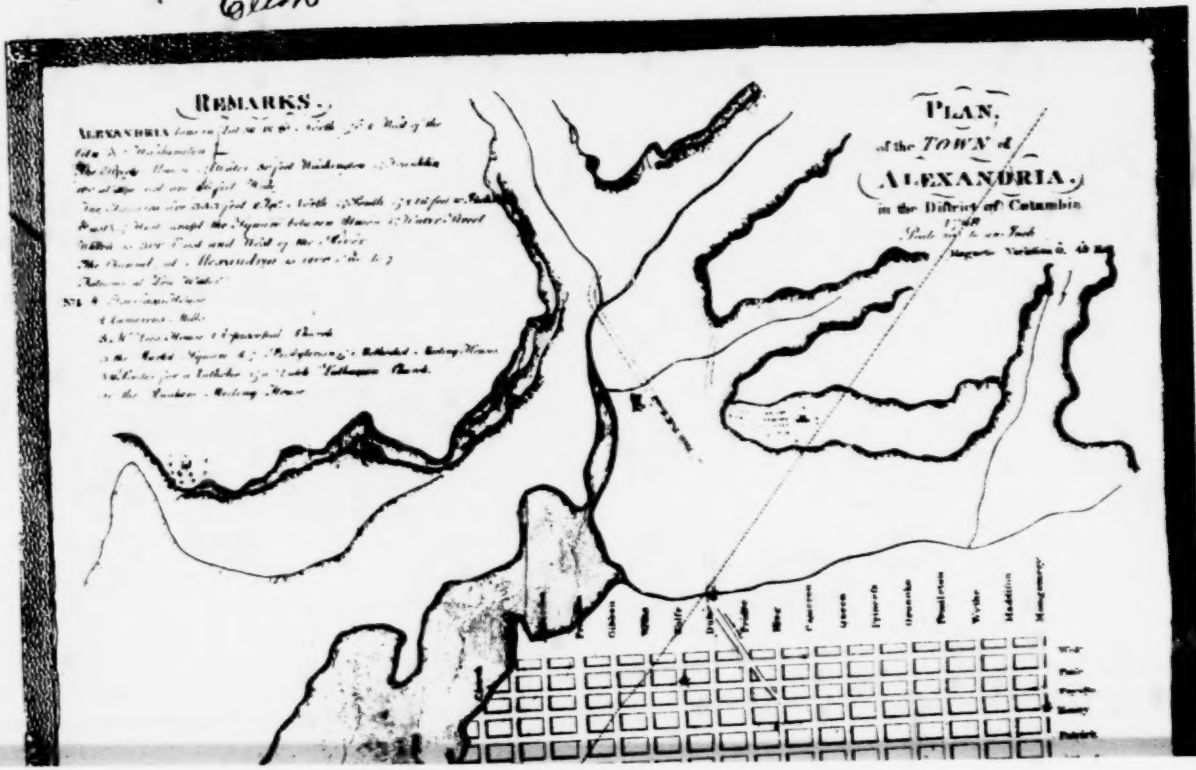
Chart of the Potomac River
Alexandria Canal Company 1838
Compiled from the Survey of
Lt. Col. Kearney
Maj. Turnbull, U.S.T.E.

JUL 13 1915

J. R. Young
Clerk

Marine Railway & Coal Co.

Exhibit 14.



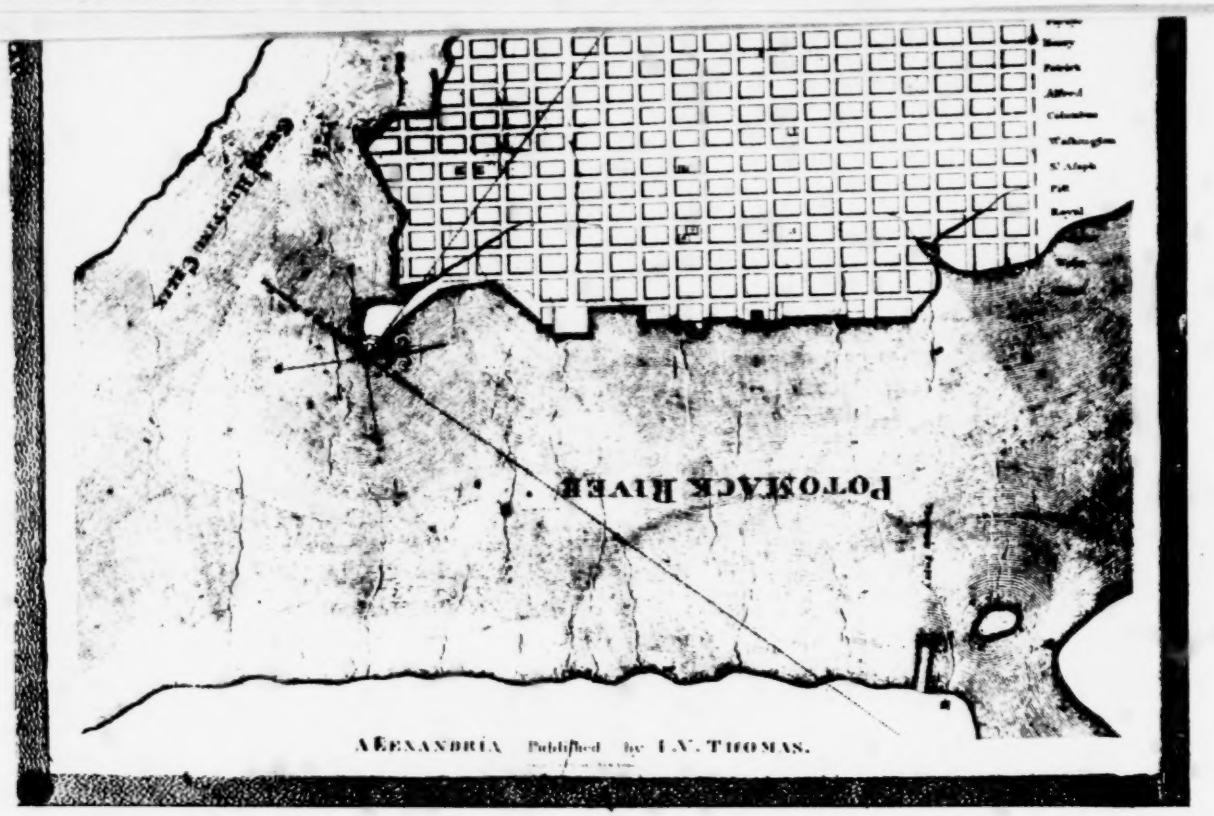
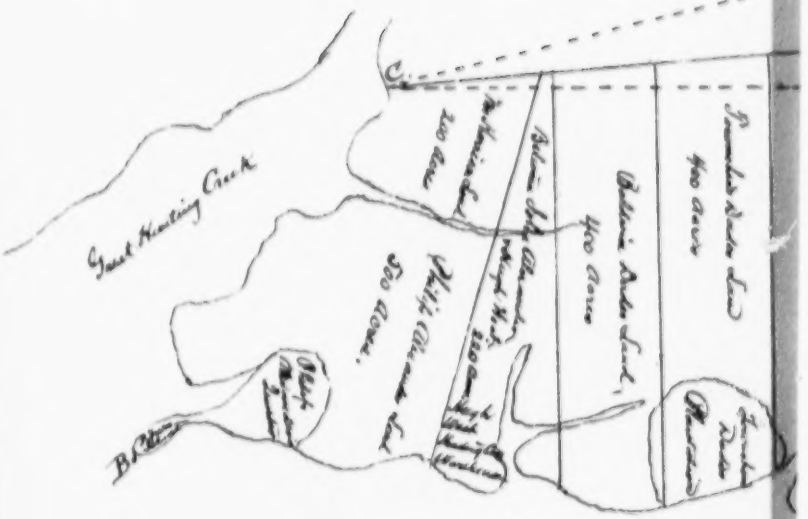

POTOMACK RIVER
ALEXANDRIA Published by I.V. THOMAS.


Exhibit 10.
77°04'
77°02
77°00
Four Mile Run
Leesburg
Alexandria County Line
Old District Line
Fairfax County

At Law. 4872.
United States of America,
v.
Marine Railway & Coal Co.
Exhibit 16.

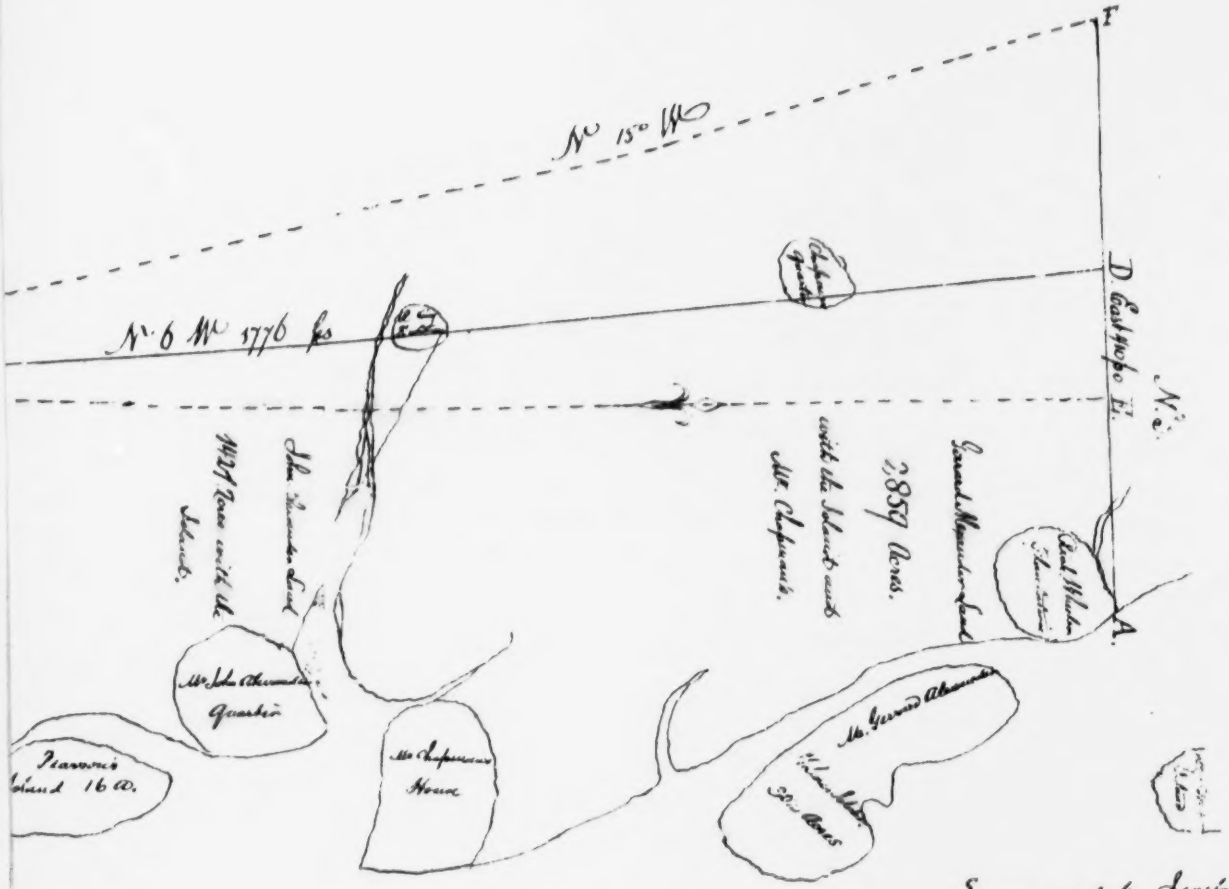
Survey made by Joseph Burnes, 1st & 2nd
Weeks of April 1741. being Survey of
Hooe's Patent for 6000. Acres.
Complete Records. Liber I. fo. 211.

FILED
JUL 15 1919
J. R. Young
Clerk



Alexandria
1741

At Law. 4872.
United States of America,
v.
Marine Railway & Coal Co.
Exhibit 16.



Survey made by Joseph Berry, 1st & 2nd
Weeks of April 1741. being Survey of
Housings Patent for 6500. Acres.
Complete Records. Liber I. fo. 211.

United States of America.
v.
Marine Railway & Coal Co.

Exhibit 16.

COMMONWEALTH
OF
VIRGINIA
LAND OFFICE
RICHMOND

Survey Book "O" No 3 Page 257

Beginning at a stake at "A" on the river shore, south of the turnpike and southern corner of the island and the end of the 48th line of Jackson City, or Alexanders Island, as surveyed by Lewis Casberry in 1847, and running thence the following courses and distances, viz;

		P
1	N 68½° E	14
2	N 47½° "	14
3	N 7½° "	5
4	N ½° "	10
5	N 74½° E	4
6	S 62° "	2
7	N 28° "	14
8	N 21½° W	2
9	N 47½° E	13
10	N 74½° E	30
11	N 74½° "	5

to (B) south east corner of the island and opposite the main channel of the river, thence the following courses and distances down the river, and with the meanderings thereof viz;

		P
12	S 64° E	48½
13	" 20½° "	35
14	" 20½° "	58
15	South	38
16	S 4° W	23
17	" 16½° E	49
18	S 17½° E	39
19	5½° "	264.

to (C) the most extreme point south; thence with the meanderings of the river here

straight line, thence with the meanderings of the river hereto reduced to a stright line, N 10° W 480 poles to (D), thence by a straight line to the beginning. Containing 97 acres and 2 roods, be the same more or less, surveyed this 20th day of December 1866 for Robert P. Dodge, and Allen Dodge, assignees of R.T. Taylor and A. A. Lorentz, by virtue of Land Office Treasury Warrant No. 30102 for 100 acres, dated 16th Dec. 1865.

Oliver Cox.
Surveyor for Alexandria County.

Magnetic variation West 2° and 20'.

.....

Land Office Richmond Virginia.

I hereby certify that the foregoing is a true copy of a plat and certificate of survey of record in this office. Witness my hand and seal of office this 28th day of March 1916.

Register Land Office.

Francis H. Pierpoint, --; *Esquire, Governor of the Commonwealth of Virginia,*

To All to Whom These Presents Shall Come, Greeting:

Know Ye, *That* in conformity with a survey made on the 20 day of December, one thousand eight hundred and sixty six, by virtue of Land Office Treasury Warrant No. 30102, there is granted by the said Commonwealth unto Allen & Robert .P. Dodge, a certain tract or parcel of land containing ninety seven acres and two Roods, being accretions to Alexanders Island, lying in the County of Alexandria & bounded as follows viz; Beginning at a stake on the Potomac River shore, south of the Turnpike & southern corner of the island and the end of the 48th line of Jackson City, or Alexanders Island, & running thence the following courses and distances viz; 1st N 68¼° E 14 poles; 2nd, N 47¼° E 14 poles, 3rd., N 7¼° E 5 poles; 4th, N ¼° E 10 poles; 5th, N 74¼° E 4 poles; 6th, S 62° E 2 poles 7th, N 38½° E 14 poles; 8th, N 21½° W 2 poles; 9th, N 47¼° E 13 poles; 10th, N 74½° E 30 poles; 11th, S 74½° E 5 poles; to a stake the south east corner of the island & opposite the main channel of the river, thence the following courses and distances down the river, and with meanderings thereof viz; 12th, S 64° E 48¼ poles; 13th, S 20½° E 35 poles; 14th, S 22½° E 58 poles; 15th, South 38 poles; 16th, S 4° W 23 poles; 17th, S 16½° E 49 poles; 18th. S 17½° E 39 poles; 19th, S 5½° E 264 poles to the most extreme point south, thence with the meanderings of the river [illegible] reduced to a straight line N 10° W 480 poles to a stake, thence by a straight line to the beginning.

FILED

JUL 15 1919

J. R. Young
Clerk

To Have and to Hold *the said Tract or Parcel of Land, with its appurtenances, to the said*

Allen & Robert Dodge, ---------- -------- *and* their *heirs forever.*

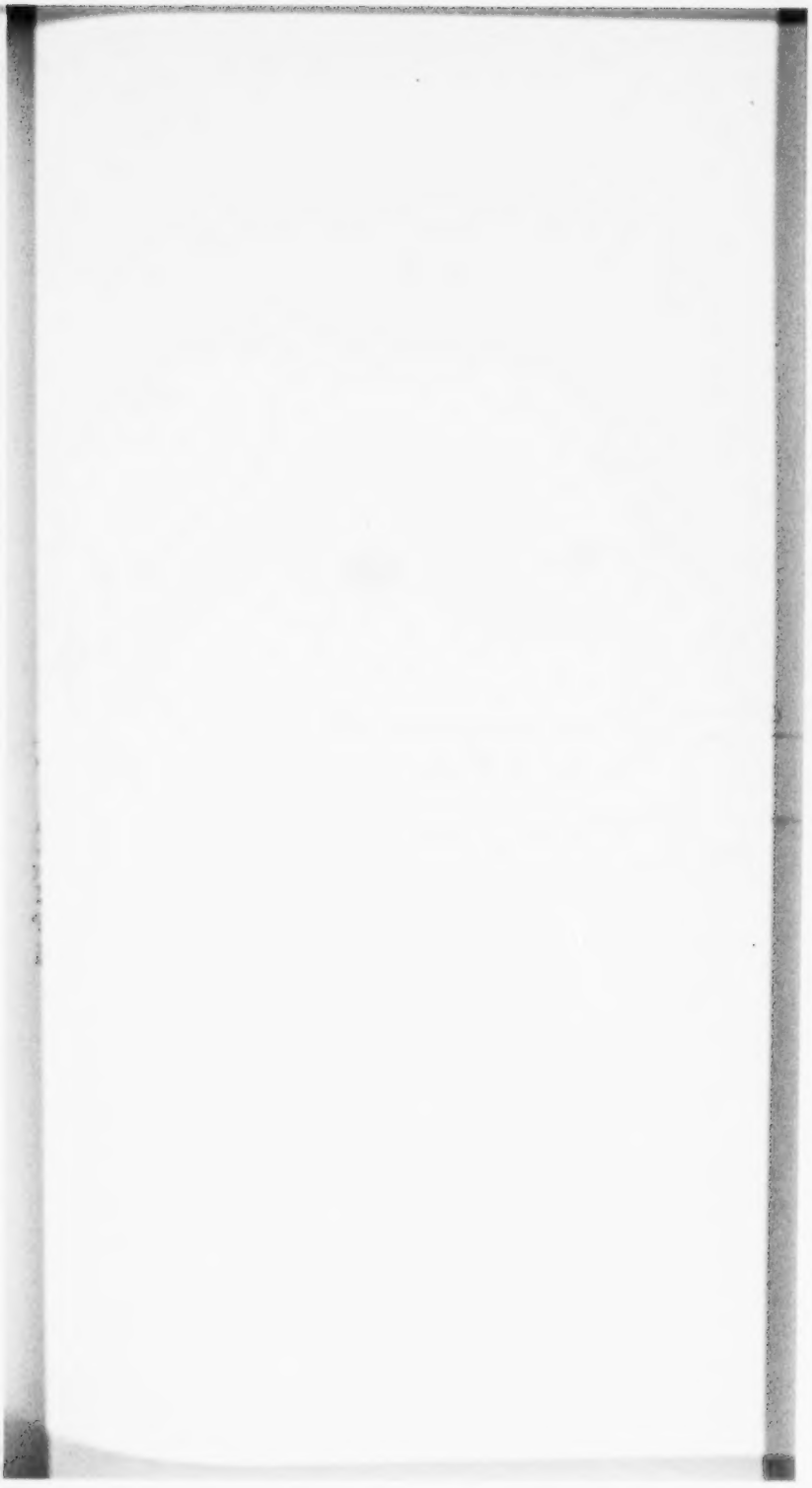
In Witness Whereof, *The said* Francis H. Pierpoint, ----------, *Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the Lesser Seal of the Commonwealth to be affixed at Richmond, on the* first, ------ *day of* October, ---------- *in the year of our Lord one thousand* eight hundred and sixty seven, -------- *and of the Commonwealth the* 92nd, -

Francis H. Pierpoint.

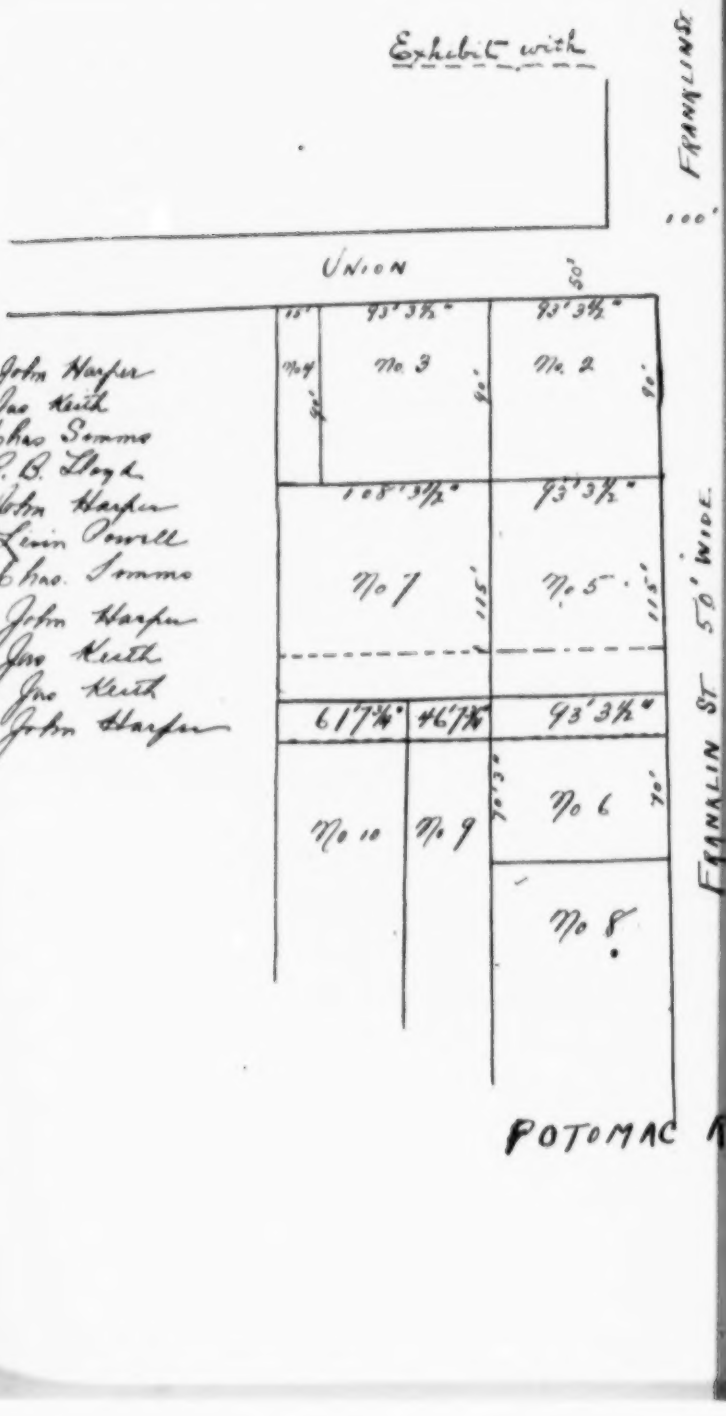
LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this 28th *day of* March 1916.

Register of the Land Office

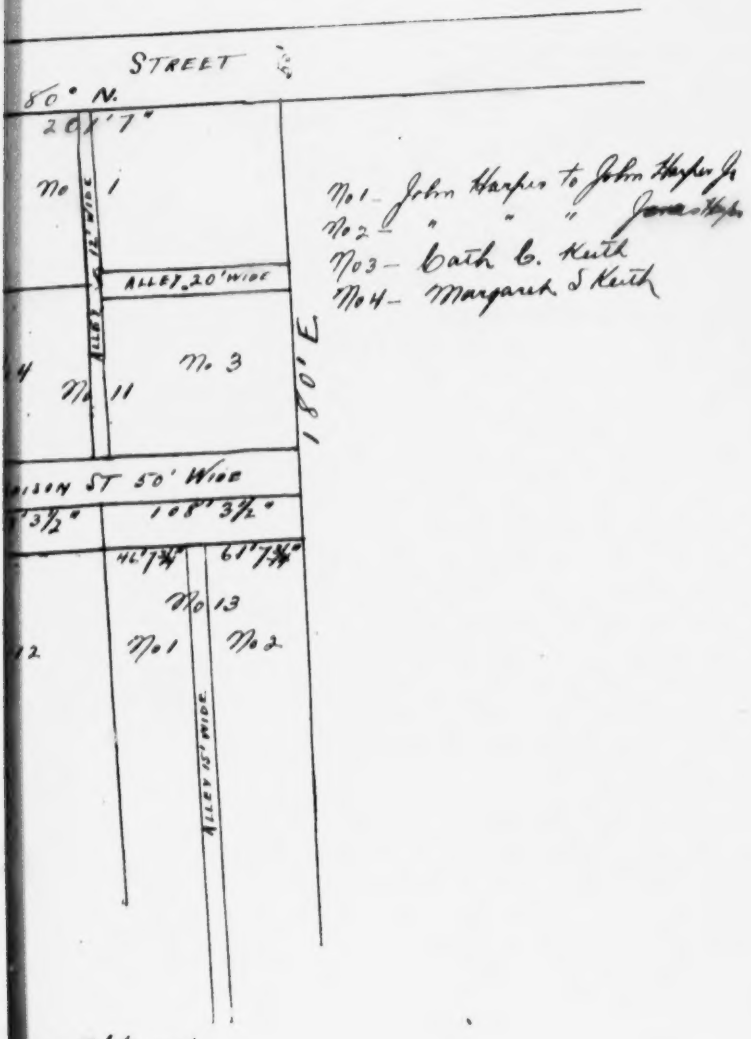


Potomack River
97 Acres 2 Roods
Potomac River
LAND OFFICE
Maryland Island
Surveyed March 6th 1819


Exhibit with
FRANKLIN ST
100'
UNION
50'
15'
93' 3½"
93' 3½"
No 4
No 3
No 2
90'
90'
90'
1. John Harper
2. Jno Keith
3. Chas Somma
4. R. B. Lloyd
5. John Harper
6. Levin Powell
8. Chas. Somma
9. John Harper
10. Jno Keith
12. Jno Keith
13. John Harper
108' 3½"
93' 3½"
No 1
No 5
115'
115'
61' 7¼"
46' 7¼"
93' 3½"
No 10
No 9
70' 3"
No 6
70'
No 8
FRANKLIN ST 50' WIDE
POTOMAC

tion filed May 28- 1919

FILED



238 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 237, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 54872 at Law, wherein United States of America is Plaintiff and Marine Railway and Coal Company, Inc., a Corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 18th day of August, 1919.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG,
Clerk.
By FRED. C. O'CONNELL,
Assistant Clerk.

239 In the Supreme Court of the District of Columbia.

At Law. No. 54872.

UNITED STATES OF AMERICA, Plaintiff,

v.

MARINE RAILWAY AND COAL COMPANY, INC., Defendant.

Bill of Exceptions.

Be it remembered that the issue joined on the defendant's general issue plea of not guilty to the declaration of the plaintiff in the above entitled cause, came on for trial before Mr. Justice Stafford, holding Circuit Court, Division No. 2, and a jury, whereupon, before the empaneling of the jury, the plaintiff and the defendant, by their respective counsel, in open court, stipulated that a jury be dispensed with upon the trial of said issue; that the empaneling of a jury be waived by both parties, and that said issue, joined upon said plea, in respect of matters of fact, as well as in respect of matters of law, be submitted to the court, so being held by said Justice, for trial and determination.

Thereupon to maintain the issue on its part joined, the plaintiff, the United States of America, gave in evidence, and submitted to the court all and singular the matters and things on its behalf stated

238 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 237, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 54872 at Law, wherein United States of America is Plaintiff and Marine Railway and Coal Company, Inc., a Corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 18th day of August, 1919.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG,
Clerk.
By FRED. C. O'CONNELL,
Assistant Clerk.

239 In the Supreme Court of the District of Columbia.

At Law. No. 54872.

UNITED STATES OF AMERICA, Plaintiff,

v.

MARINE RAILWAY AND COAL COMPANY, INC., Defendant.

Bill of Exceptions.

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Thereupon to maintain the issue on its part joined, the plaintiff, the United States of America, gave in evidence, and submitted to the court all and singular the matters and things on its behalf stated

and referred to in the stipulation filed in this cause on January 17, 1916, and the further stipulation filed in this cause on November 22, 1916; *that is to say:*

(A) All the statements of matters of fact, and all the documentary evidence, with the plats and exhibits, stated and referred to in said stipulation of January 17, 1916, under the paragraphs designated by Roman numerals as follows:

I—from sub-paragraphs "*a*" to "*k*", both inclusive;

III—from sub-paragraphs "*a*" to "*x*", both inclusive;

VI—from sub-paragraphs "*a*" to "*i*", both inclusive;

240 VIII—from sub-paragraphs 1 to 22, both inclusive.

(B) All the statements of fact and all the documentary evidence with the plats and exhibits stated and referred to in said further stipulation of November 22, 1916, under paragraphs designated "*a*" to "*g*," both inclusive.

Whereupon the defendant, by its counsel, interposed an objection to the offer of the plaintiff, in evidence, of all the matters of fact and documentary evidence, plats and exhibits, stated and referred to in the said stipulations filed in this cause on January 17, 1916, and November 22, 1916, to-wit:—

(A) In the stipulation of January 17, 1916, under the paragraphs designated by Roman numerals, as follows:—

I—from sub-paragraphs "*a*" to "*k*," both inclusive;

III—from sub-paragraphs "*a*" to "*x*," both inclusive;

VI—from sub-paragraphs "*a*" to "*i*," both inclusive;

VIII—from sub-paragraphs 1 to 22, both inclusive;

(B) In the stipulation of November 22, 1916, under paragraphs designated "*a*" to "*g*," both inclusive

The said defendant, by its counsel, insisting that the said statements of matters of fact, and all the documentaray evidence with the plats and exhibits, stated and referred to in said stipulations of January 17, 1916, and November 22, 1916, are inadmissible as evidence on behalf of the plaintiff on the trial of the general issue upon the defendant's plea of not guilty, on the grounds following, namely:—

(1) That the premises described in the declaration is within the territorial limits of the City of Alexandria, and the State of Virginia and that the subject-matter of this suit is within the jurisdiction of the Courts of the City of Alexandria, and of the State of Virginia

(2) That under the compact of 1785, between the State of Virginia and the State of Maryland, and particularly under the provisions of the sixth and seventh paragraphs of said compact, the Rive

Potomac is made a common highway for the purposes of
41 navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to all other persons
n amity with said States, trading to or from Virginia or Maryland,
nd that the citizens of each State, respectively, have full property
n the shores of Potomac River adjoining their lands, with all emolu-
ments and advantages thereunto belonging, and the privilege of
naking and carrying out wharves and other improvements so as
ot to obstruct or injure the navigation of the river, etc.; and that
y virtue of these provisions in said compact there was vested in
he State of Virginia, and her citizens, the riparian right of access
o and the use of the Potomac River in common with the State of
Maryland, and the United States, and all other persons trading to
or from Virginia or Maryland; and there was also vested in the
State of Virginia and her citizens, full property in the shores of the
Potomac River adjoining their lands, with all emoluments and ad-
vantages thereunto belonging; and the right to make and carry out
wharves and other improvements so as not to obstruct or injure the
navigation of the river. That the provisions of the seventh para-
graph of said compact vested in the State of Virginia territorial juris-
diction of the shores of the Potomac River adjoining the lands of its
citizens, and property and dominion in the shores of the Potomac
River, and the right of making and carrying out wharves, and
other improvements, so as not to obstruct or injure the navigation
of the river, for the use and benefit of her citizens.

(3) That in 1789, when the State of Virginia ceded to the United States the territory of Alexandria City and County to form a part of the District of Columbia, said State, and her citizens, by virtue of said compact, were possessed of the jurisdiction, property and dominion of the shores of the Potomac River, and the right to construct wharves and other improvements into the river Potomac in so far as the same did not obstruct the navigation of the river; and when, by the Act of 1789, the State of Virginia ceded the territory of Alexandria City and County to the United States, it ceded
242 all of its jurisdiction, property, dominion and rights in the Potomac River and the shores thereof, to the United States.

(4) That the cession of Maryland of territory for the District of Columbia, made in 1791 to the United States, did not, and could not, vest in the United States any of the jurisdiction, property, dominion or rights secured to the State of Virginia, and her citizens, by the compact of 1785, the State of Maryland, having previous to her said cession, vested such jurisdiction, property dominion and rights in the State of Virginia, and her citizens, and which were already vested in the United States by the Virginia cession of 1789.

(5) That by the Act of Congress, approved July 9, 1846, the United States re-ceded to the State of Virginia, and her citizens, all that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same and forever relinquished to the State of Virginia all the rights and jurisdiction, previously ceded by the

State of Virginia to the United States, within the said territory of Alexandria City and County, and thereby restored the State of Virginia, and her citizens, to all the jurisdiction, property, dominion and rights held and enjoyed by said State, and her citizens, under said compact of 1785, previous to the cession by Virginia to the United States, of 1789.

(6) That during the time that the territory of Alexandria City and County was a part of the District of Columbia there was no Act of Congress passed in any way abrogating the property or rights conferred upon the State of Virginia, and her citizens, by said compact of 1785.

(7) That by the Arbitration and Award of January 16, 1877, accepted by the State of Virginia by the Act of the General Assembly of that State, approved March 14, 1878, and by the State of Maryland, by the Act of the General Assembly of that State,
243 approved April 4th, 1878, and consented to by the Act of Congress, approved March 3, 1879, the true boundary line between the State of Virginia and the State of Maryland, was, agreeably to the compact between said States of 1785, established at low-water mark on the south side of the Potomac River, and to which Virginia has the right in the soil, to be measured from low-water mark at one headland to low-water mark at another, without following indentations, bays, creeks, inlets, or affluent rivers, and to which Virginia is entitled to full dominion over the soil to low-water mark on the south shore of the Potomac, and has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, all agreeably to said compact. And that by said Act of Congress the said Arbitration and Award and agreement between the said States, and to each and every part and article thereof, the plaintiff, the United States of America, consented.

(8) That it has been judicially determined by the Supreme Court of the United States, that said Arbitration and Award established the true boundary line of Virginia, agreeably to the compact of 1785 at low-water mark on the south side of the Potomac River, to which the State of Virginia has a right in the soil, and that said low-water mark is to be measured from low-water mark at one headland to low-water mark at another, without following indentations, bays creeks, inlets or affluent rivers; and that Virginia is entitled not only to full dominion of the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfere with the proper use of it by Maryland, all agreeably to the compact of 1785.

(9) That by reason of the matters and things set forth in the above grounds of objection, the plaintiff is estopped and
244 barred from setting up claims of title to the fee in the premises described in the declaration.

Thereupon, the court as and when each of the said statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, and November 22, 1916, were offered in evidence by the plaintiff to maintain the issue on its part upon the general issue, upon the defendant's plea of not guilty, overruled the objection of the defendant to the same so far as concerns the trial of the general issue, and as offered to show title on the part of the said plaintiff to the premises described in the declaration. To which ruling of the court in respect of each and every statement of matters of fact, document, plat and exhibit so offered in evidence by the plaintiff, the defendant duly excepted.

Thereupon, to maintain the issue on its part joined, the defendant Marine Railway and Coal Company, Inc., gave in evidence, and submitted to the court all and singular the matters and things on its behalf stated and referred to in the stipulation filed in this cause on January 17, 1916, and in the supplemental stipulation filed in this cause on April 21, 1916; *that is to say:*

(A) All the statements of matters of fact and all the documentary evidence with the plats and exhibits, stated and referred to in said stipulation of January 17, 1916, under the paragraphs designated by Roman numerals, as follows:

II—from sub-paragraph- "*a*" to "*g*," both inclusive;

IV—from sub-paragraphs "*a*" to "*z*," both inclusive;

V—from sub-paragraphs "*a*" to "*m*," both inclusive;

VII—from sub-paragraphs 1 to 6, both inclusive;

(B) All the statements of matters of fact and all the documentary evidence, with the plats and exhibits, stated and referred to in the supplemental stipulation of April 21, 1916, under the paragraphs designated "*a*" to "*q*," both inclusive.

And thereupon, further to maintain the issue on its part joined, the defendant, Marine Railway and Coal Company, Inc., offered in evidence, from the stipulation filed in this cause on May 23, 1919, paragraph "*e*" thereof, being the grant made by King James II, to Thomas Lord Culpeper of the Northern Neck of Virginia, as in said paragraph set forth.

Whereupon, counsel for the plaintiff interposed and objected to the offer of said grant upon the grounds following:

(1) That the *locus in quo* being, and having been found in this cause to be, within the territorial limits of the District of Columbia, the same being part of the original Province of Maryland, granted by King Charles I to Cæcilius Calvert, Lord Baltimore, on June 20, 1632, the subsequent patent to Lord Culpeper granting a tract situate and being in Virginia did not, and could not, include said
245 *locus,* and was wholly inoperative to pass or convey any right title, estate or interest in the bed of the Potomac River to the

high-water line on the Virginia shore, already vested by prior grant in Lord Baltimore.

(2) That it has already been adjudicated by the Supreme Court of the United States, and it is the settled law of this court that "the grant to Lord Baltimore in unmistakable terms included the Potomac River and the soil under the same to the high-water mark on the Southern or Virginia shore; that the territory thus granted was never divested by any valid proceeding prior to the Revolution; nor was such grant affected by the subsequent grant to Lord Culpeper."

(3) That said grant to Lord Culpeper cannot be a source of title to land, including the land here in issue, eastward and northward of the original high-water mark on the Southern shore of the Potomac River and, therefore, within the Province of Maryland granted to the Proprietary thereof on June 20, 1632, and legally derived to the plaintiff, the United States of America, from the State of Maryland the lawful successor of said Proprietary; and

(4) That the *locus in quo* is not within the lands conveyed by said grant.

The court sustained said objection and refused to admit said grant in evidence upon the general issue plea herein; and, upon plaintiff's motion on the same grounds, further ordered that the same, as offered in evidence in sub-paragraph "g" of paragraph or Section IV of the stipulation filed in this cause on January 21, 1916, be excluded and struck out so far as concerns the trial of the general issue; to which ruling of the court the defendant duly excepted.

The defendant then offered in evidence from said stipulation filed herein on May 23, 1919, paragraph "f" thereof being an Act for confirming the grants made by his Majesty within the bounds of the Northern Neck as they are now established, passed by the Virginia Assembly on October 27, 1748. Whereupon, counsel for
246 the plaintiff objected to said offer on the grounds following:

(1) The lands referred to in said Act being within the bounds of the Northern Neck of Virginia, have the same limits as those in the grant to Lord Culpeper, previously offered and rejected, and, therefore, do not embrace the soil under the Potomac River below the high-water mark already vested by the charter of 1632 in the Lord Proprietary of Maryland;

(2) Said Act is subject to all of the objections heretofore made with respect to the Culpeper grant, which objections, *mutatis mutandis*, are here repeated.

The court sustained the said objection and refused to admit said Act in evidence, and also, upon plaintiff's motion, further ordered that the said Act, as offered in evidence in sub-paragraph "h" of paragraph or section IV of the stipulation filed in this cause on January 17, 1916, be struck out so far as the same concerns the trial of the general issue herein; to which ruling of the court the defendant duly excepted.

The defendant then offered in evidence from the stipulation filed in this cause of January 17, 1916, Section IV, paragraph "e" thereof, being a grant made on July 2, 1669, by Sir William Berkeley, Knt. Governor of Virginia, to John Matthews. Whereupon counsel for the plaintiff objected to said offer on the grounds following:

(1) Said grant does not purport to convey the *locus in quo*. And this, for two reasons: (*a*) The tract conveyed is described as lying and being on the Northwest side of the Potomac River and as beginning at a tree standing near the head of Mussell Creek, and running down said Creek to a point of land abutting on the Potomac River and from thence down the said River. It therefore does not convey land which, at that time, and until 1911, constituted part of the bed of the Potomac River below the high-water mark. (*b*) The tract is described as lying and being on the Southwest side of the Creek called Mussell Creek, which is shown by sub-paragraph "g" of paragraph or section II of the stipulation filed on January 17, 1916, heretofore offered in evidence, to be the same as Indian
247 Cabin Creek and now known as Great Hunting Creek. Said Matthews tract includes no part of the upland adjacent to the *locus in quo*, but is separated therefrom by the full width of the Great Hunting Creek.

(2) The grant is a grant of land in the Province of Virginia only. It therefore could not include, and was inoperative to pass any right, title, estate or interest in the soil of the bed of the Potomac River, which, up to the high-water mark on the Southern shore had already been previously vested in the Lord Proprietary of Maryland.

(3) Said grant is subject to all objections heretofore made with respect to the offer of the Culpeper grant already rejected, which objections are here repeated.

The court sustained said objection, whereupon counsel for the defendant stated that the said grant was offered in evidence not for the purpose of deraigning title, on behalf of the defendant to the lands in issue, but for the sole purpose of defining by reference, the terms used to describe the land conveyed in another grant, namely, the Howsen grant, under which the defendant did claim. The court thereupon permitted the said Matthews grant to be read in evidence for the purpose stated, and no other.

The defendant then offered in evidence, from the stipulation filed in this cause on May 23, 1919, paragraph "d" thereof, being a grant made on October 21, 1669, by Sir William Berkeley, Knt., Governor of Virginia, to Robert Howsing. Whereupon counsel for the plaintiff objected to said offer on the grounds following:

(1) Said grant does not purport to convey the *locus in quo*. The grant describes the tracts conveyed as situate, lying and being on the west side of the Potomac River and its easterly boundary as extending down said river. It therefore does not carry land, which, at that

time and until 1911, constituted part of the bed of said river below the high-water mark.

(2) The grant is but a grant of land in the Colony of Virginia, which, at its date, did not, and could not, include the soil of the
248 bed of the Potomac River, which was then within the Province of Maryland, the whole of said Province, extending to the high-water mark on the southern shore, having been previously separated from Virginia by the terms of the grant to Lord Baltimore on June 20, 1632.

(3) Inasmuch as, at the date of said Howsing grant, the dominion and property of the soil under the Potomac River to the high-water mark thereof, including the *locus in quo*, was vested in the Lord Proprietary of Maryland as a part of the prerogative rights, or *jura regalia*, annexed to the political powers conferred on him in that capacity, private ownership in said soil was legally impossible. The same was not then subject to private grant by the Maryland Proprietary, much less by the Governor of Virginia.

(4) Said grant is subject to all the objections heretofore made with respect to the offer of the Culpeper grant, already rejected, which objections are here repeated. The court sustained said objection and refused to admit said Howsing grant in evidence, and, upon plaintiff's motion on the same grounds, further ordered that the same, as offered in evidence in sub-paragraph "f" of paragraph or section IV, and at the end of sub-paragraph "z" of paragraph or section IV of the stipulation of January 17, 1916, be excluded and struck out so far as concerns the trial of the general issue: to which ruling of the court the defendant duly excepted.

The defendant then offered in evidence, from the stipulation filed in this cause on May 23, 1919, paragraph "g" being the report of the decision of the Court of Appeals of Virginia in the case of *Birch v. Alexander*, reported in I Washington Reports, page 34. Thereupon, counsel for plaintiff objected to the offer of said report upon the grounds following:

(1) That the lands to which said opinion referred were lands within the limits of the Colony and State of Virginia.

(2) That the Court of Appeals of Virginia was without power to adjudicate the title to lands below the high-water mark of the
249 Potomac River, and, therefore, within the limits of the Province and State of Maryland, and that part of the District of Columbia which was ceded by Maryland.

(3) That the estates and interests claimed by the parties to said cause of Birch v. Alexander were necessarily confined to lands which were within the physical boundaries of the Howsing patent and the Culpeper grant, both of which have been already excluded.

(4) Said offer is subject to the same objections heretofore made with respect to the offer of the Culpeper patent, which objections

mutatis mutandis, are here repeated. The court sustained said objection and refused to admit the said opinion in evidence: to which ruling of the court the defendant duly excepted.

The defendant thereupon offered in evidence *seriatim,* the wills, deeds, and other assurances constituting the items in paragraph "h" numbered from 1 to 95, both inclusive, stated and referred to in the stipulation filed in this cause on May 23, 1919, as being the record evidence of title under which it claimed to be the owner in fee simple, not only of the upland above the mean high-water line and adjacent to and abutting upon the *locus in quo,* but also of the *locus in quo* as described in the plaintiff's declaration.

To the first of which said offers, being the last will of John Alexander, deceased, and successively to each of said offers when and as made, the plaintiff, by its counsel, objected upon the grounds following:

(1) That the said instrument was inoperative to pass any part of the *locus in quo* for the reason that the author of said instrument was a stranger to the title of said *locus,* which, at the respective dates when said instrument was made and took effect, was part of the submerged bed of the Potomac River below the high-water mark, and therefore not within the tenement of any person whose estate was then in the author of said instrument.

250 (2) That whatever right, title, interest or estate the author of such instrument might, under the local law of Virginia, have in the upland in the State of Virginia, abutting upon and bounded by the mean high-water line of the Potomac River as it existed down to the 6th day of September, 1910, when the work of filling in the *locus in quo* began, said right, title, interest or estate was limited by the territorial limits of the State of Virginia, as already found and determined upon the plea of jurisdiction, previously tried in this cause.

(3) That the title to the *locus in quo* as part of the submerged soil constituting a portion of the bed and shore of the Potomac River within and below the line of mean high-water on the right or western bank of the Potomac River as it existed on and prior to the 19th day of December 1791, was vested successively and without interruption in the Lord Proprietary of Maryland, the State of Maryland and the United States of America, from the date of the charter of King Charles I to Lord Baltimore, and the author of said instrument is not shown to have had at the date thereof, or any subsequent time, any right, title, estate or interest in said *locus* by virtue of any valid grant, or other assurance of title from such Lord Proprietary or the State of Maryland, or the United States of America.

Thereupon, the court, as and when each of the said instruments was offered in evidence, sustained the objection to the same, so far as concerns the trial of the general issue and as offered to show title

on the part of said defendant to the said *locus*. To which ruling of the court in respect of each and every instrument so offered, the defendant duly excepted.

Defendant then offered in evidence from the stipulation filed in this cause on May 23, 1919, paragraph 96 thereof, being the amendment of the charter of the Marine Railway Shipbuilding and Coal Company, changing the name thereof to the Marine Railway and Coal Company, Inc., the statement of fact of the possession of the premises described in the declaration, the letters, No. 1 and 2, and the statement following the said letters, contained in said stipulation of May 23, 1919.

Thereupon the plaintiff and the defendant each announced that its case was closed. The several stipulations hereinbefore referred to are incorporated in and made a part of this bill of exceptions as if herein fully and at length repeated, and the testimony
251 and proof given in evidence from said stipulations and the testimony and proof offered in evidence from said stipulations constituted respectively, all the evidence offered and admitted and all the evidence offered and rejected on the trial of the said general issue plea, saving and excepting matters of which judicial notice may be taken. Thereupon, the defendant requested and moved the court to rule as follows:

(1) That the statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, and November 22, 1916, offered in evidence by the plaintiff to maintain the general issue on its part, are, on the grounds set forth in the defendant's objections thereto, inadmissible as evidence to show title to the plaintiff to the fee of the premises described in the declaration, and that the same be excluded as evidence to be considered on behalf of the plaintiff on the trial of the general issue upon the defendant's plea of not guilty.

(2) That the statements of matters of fact, documents, plats and exhibits, stated and referred to in the said stipulations of January 17, 1916, of April 21, 1916, and of May 23, 1919, offered in evidence by the defendant to maintain the general issue on its part, are, on the grounds set forth in the defendant's objections to the evidence offered by the plaintiff, admissible as evidence to show title, in the defendant, to the fee of the premises described in the declaration, to be considered on the trial of the geenral issue, upon the defendant's plea of not guilty.

(3) That the plaintiff, on the law and evidence in this case, is not entitled to recover against the defendant the fee of the premises in the declaration described, and that the finding of the court on the general issue joined upon the defendant's plea of not guilty is for the defendant.

But the court refused to grant said request and motion, to which refusal the defendant duly excepted on the ground that the said ruling of the court is not sustained by the law and evidence in this cause.

252 Thereupon the plaintiff prayed and moved the court to rule as follows:

(1) That, by the true construction of the charter of Maryland granted by the Crown on June 20, 1632, to Caecilius Calvert, Baron of Baltimore, his heirs and assigns, the Lord Proprietary of the Province of Maryland became and was seized as of fee, in right of his dominion, of and in the soil of the Potomac River to the high-water mark on the further, southern or Virginia shore of the same.

(2) That, in consequence of the American Revolution, the entire property, title and estate of the Lord Proprietary of the Province of Maryland in and to the soil of said river, being part of the prerogative and royal rights annexed to the political powers conferred on him in that capacity, devolved upon and vested in the people of the State of Maryland and the Government ordained by them.

(3) That the legal effect of the Maryland Acts of Cession and of Confirmation passed, respectively, December 23, 1788, and December 19, 1791, and the Acts of Congress approved respectively July 16, 1790, and March 2, 1791, accepting the same for the permanent seat of the Government of the United States, was to transfer to and vest in the United States, as the sole and exclusive sovereign of the Federal District, the entire property, title and estate of the State of Maryland in and to the soil of the Potomac River within the boundary lines of the said District as definitively located by the President's Proclamation of March 30, 1791; and the United States, as successor to the State of Maryland, thereby became and was seized as of fee of and in the soil of said river up to the high-water mark on the further, southern or Virginia shore thereof.

(4) That the Acts of Congress, approved, respectively, June 25, 1910, and February 27, 1911 (referred to in sub-paragraphs
253 "*e*" and "*f*" of Section 1 of the stipulation of January 17, 1916), conferred upon the Secretary of War, full power and authority, acting in that behalf through the Chief of Engineers and the Engineer Officer in charge of the United States Engineer office at Washington, D. C., for the purpose of improving the Potomac River by deepening the channel thereof in accordance with the report submitted in House Document No. 1253, 60th Congress, 2nd Session, recited in said Act of Congress approved June 25, 1910, to cause a rip-rap wall or revetment to be constructed on the submerged soil constituting the bed of the Potomac River along the edge of the channel and between the points stated in the evidence, and, to cause material dredged from the bed of said river, in the course of deepening the channel thereof, to be deposited on the river bed behind said wall and between the same and the highwater mark of said river, and thereby to cause the submerged soil behind said wall and between the same and the line of ordinary or mean high-water on the right, southern or western shore of said river to be filled in and raised above the water level of said river.

(5) That any land raised upon the original submerged bed of the Potomac River eastward or riverward of the ordinary or mean line of high-water, under the authority and in the manner described in the preceding instruction, would, in law, continue to be the property and estate of the owner of the fee of the submerged bed on which the same was raised.

(6) That, since the compact made in the year 1785 between Virginia and Maryland was the act of the two States in their character as States, the only parties to the same being the States themselves and not the citizens thereof as such, individually, said compact rested solely upon the mutual agreement of the States in their respective political capacities and was consequently subject, at any and all times, to be modified, changed, or abrogated in any or all of its stipulations by the joint act of the said States, and
254 therefore, did not, and could not, constitute in any sense a grant from the State of Maryland to any individual citizen of the State of Virginia of any right, title, estate or interest in the soil of the Potomac River below the high-water mark thereof and thus within the limits of the State of Maryland.

(7) That, when the two sovereign states, which were the sole parties to said compact, and possessed power to alter or abrogate it at their pleasure, ceded the portions of territory respectively belonging to them on the right and left banks of the Potomac River to the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons, pursuant to the 8th Section of the I Article of the Constitution, the United States, as the single sovereign of the two territories thus united in one, displaced both of the contracting parties on whose *mutuus consensus* the compact rested, and said compact was thereby necessarily dissolved and extinguished.

(8) That nothing contained in the Act of Congress approved July 9, 1846, (9 Stat. Ch. 35), whereby that portion of the District of Columbia ceded to the United States by the State of Virginia was ceded and relinquished to the said State, operated to renew or recreate, in favor either of Virginia or of the United States, the stipulations of the compact originally made in 1785 by and between the States of Virginia and Maryland.

The defendant objected to the granting of said request, but the court overruled said objection and granted the same; to which ruling the defendant duly excepted on the ground that the said ruling of the court is not sustained by the evidence and law in this case.

Thereupon, the issue joined on the defendant's general
255 issue plea of not guilty, having been argued by counsel for the respective parties, was submitted to the court, so being held by said Justice, for determination; and the said court, having duly considered the same, found the said issue in favor of the plaintiff, the United States of America, for the whole of the property and interest claimed in the plaintiff's declaration.

And thereupon, the defendant, by its counsel, moved the court, writing filed in this cause, in arrest of judgment, to set aside the ding of the court in favor of the plaintiff on the trial of said gen- l issue, upon the defendant's plea of not guilty, and for a new al, upon the following grounds:

(1) Because the court ruled and found on the issue joined upon e defendant's plea to the jurisdiction in favor of the plaintiff, and led and held that the plaintiff's cause of action did not arise and e real estate described in the plaintiff's declaration was not situated ithin the limits of the City of Alexandria, County of Alexandria, ate of Virginia, but within the limits of the District of Columbia, d within the jurisdiction of this court.

(2) Because the court overruled the defendant's objections to the dmissibility in evidence of the statements of the matters of fact, ocuments, plats and exhibits stated and referred to in the said stip- lations filed in this cause January 17, 1916, and November 22, 916, offered in evidence by the plaintiff to maintain the general ssue on its part, and ruled that the same be admitted and considered n the trial of the general issue as evidence to show title in the plain- iff to the fee in the premises described in the declaration.

(3) Because the court sustained the objection of the plaintiff to he admissbility in evidence of the statements of fact, documents, lats and exhibits, stated and referred to in the said stipulations iled in this cause January 17, 1916, April 21, 1916, and May 23, 1919, offered in evidence by the defendant to maintain the general issue on its part, and ruled that the same were inadmissible
256 and that the same be excluded from consideration on the trial of the general issue upon the defendant's plea of not guilty, as evidence to show title in the said defendant to the fee in the premises described in the declaration.

(4) Because the finding of the court on the trial of the general issue upon the defendant's plea of not guilty, for the plaintiff, and that the plaintiff is entitled to recover the fee in the premises de- scribed in the declaration, is contrary to the evidence and law in this cause.

All of which several motions the court overruled, and to which ruling of the court the defendant duly excepted.

And thereafter, it was considered by the court that the United States of America recover against the defendant, Marine Railway and Coal Company, Inc., the real estate and premises, described and claimed in the plaintiff's declaration herein, in fee simple absolute, and all the rights, easements, privileges and appurtenances to the same belonging, or in anywise appertaining, and have thereof its possession against the said defendant, and its legal costs in that behalf expended.

Be it further remembered, that each of the separate and several exceptions taken by counsel for the defendant, as hereinbefore set forth, was so taken before the issue joined on said plea of not guilty,

was submitted for determination, and that each of said exceptions was then and there separately and severally entered upon the minutes of said Justice, and thereupon the defendant prayed, that its bill of exceptions filed in this cause on the 22d day of November, 1916, be incorporated in, and made a part of this bill of exceptions as if herein fully and at length repeated and set out in detail, and the defendant further prayed the court to sign and seal this, its bill of exceptions, according to the form of the Statute in such case made and provided, which is accordingly done, and said bill of exceptions is hereby made a part of the record in said cause, this 25th day of June, 1919, now for then.

WENDELL P. STAFFORD,
Justice.

257 Service of a copy of the defendant's exceptions hereto attached and of notice of the time fixed to settle the same acknowledged this — day of June, 1919.

HENRY H. GLASSIE,
Attorney for Plaintiff.

258 [Endorsed:] Supreme Court, District of Columbia. United States of America, vs. Marine Railway & Coal Co., Inc. At Law No. 54872. Bill of Exceptions on Trial of General Issue. James R. & Harry B. Caton, Attorneys and Counsellors at Law, Alexandria, Va.

Endorsed on cover: District of Columbia Supreme Court. No. 3312. Marine Railway and Coal Company, Inc., a corporation, appellant, vs. United States of America. Court of Appeals, District of Columbia. Filed Sept. 13, 1919. Henry W. Hodges, clerk.

Wednesday, March 3rd, A. D. 1920.

No. 3312.

MARINE RAILWAY AND COAL COMPANY, INC., a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA.

The argument in the above entitled cause was commenced by Mr James R. Caton, attorney for the appellant, and was continued by Mr. H. H. Glassie, attorney for the appellee, and was concluded by Mr. James R. Caton, attorney for the appellant. On motion the appellant is allowed to file a reply brief herein with leave to appellee to answer same if so advised.

In the Court of Appeals of the District of Columbia.

No. 3312.

MARINE RAILWAY AND COAL COMPANY, INC., a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Opinion.

Opinion of the Court per Mr. Justice VAN ORSDEL:

The United States, plaintiff below, seeks by ejectment to recover possession of 60,984 square feet (1.4) acres of land situated below and to the east of the high-water line of the Potomac River within a cove or indentation on the river bank at or adjacent to the City of Alexandria, Virginia, as the high-water line existed on the 1st day of January, 1911.

It appears that Congress in the River and Harbor Act of June 25, 1910, (36 Stats. L., 630), made an appropriation for "improving Potomac river at Alexandria, Virginia, in accordance with the report submitted in House Document numbered Twelve hundred and fifty-three." In the course of improving the river under direction of the Secretary of War, a riprap sea-wall was constructed along the western edge of the channel below low-water mark between two points of land jutting into the river, known as Point Lumley and James Point. The wall thus constructed extended across the indentation called Battery Cove, embracing the land in controversy. In deepening the channel the material dredged from the bed of the river was deposited on the flat behind the wall, filling the river bed from the wall back to

the mean high-water mark on the Virginia shore. It also appears "that at the date of the commencement of the building of said riprap wall the average depth of water within the area aforesaid in front of the upland claimed to be owned by the defendant, The Marine Railway & Coal Company, Incorporated, was one and one-half feet at mean low-water, that the mean range of tide was three feet, and that there were, at that date, no existing structures of any kind extending from the defendant's upland beyond the mean high-water mark and within the area enclosed and reclaimed."

It also appears that the bed of the river within the limits of Battery Cove was all below low-water mark, except a narrow margin adjoining the river bank, between high and low-water lines, which was covered and exposed twice daily by the rising and receding tides.

When the area was filled, plaintiff caused a fence to be constructed along the former high-water line, on which notices were posted warning all persons that said land was Government property and that trespassers would be prosecuted. Shortly thereafter defendant company destroyed the fence and took possession of the reclaimed land; hence this suit.

From a judgment in favor of plaintiff, defendant appeals.

It is settled law that the boundary line between Maryland and Virginia was originally fixed by the charter granted by Charles First in 1632 to Lord Baltimore of the Province of Maryland embracing the Potomac River, the soil under it and the islands therein to the high-water line of tide-water on the Virginia shore. Morris vs. United States, 174 U. S., 196; Maryland vs. West Virginia, 217 U. S., 1, 46; Alexandria Canal Co. vs. District of Columbia, 1 Mackey, 217. It was held that the title thus granted to Lord Baltimore was not divested by any valid proceedings prior to the Revolution, nor affected by the prior grants by James First to the Colony of Virginia or the subsequent grant to Lord Culpepper of the territory between the Potomac and the Rappahannock Rivers, commonly called the "Northern Neck of Virginia."

Defendant, presumably for the purpose of establishing later rights by prescription, relies upon a grant to one Robert Howsing on October 21, 1669, by Sir William Berkeley, Governor of Virginia, of "6,000 acres of land situated upon the freshes of the Potomac River on the west side thereof above the dividing branches of the same, beginning at a red oak standing by a small branch or run of water near opposite to a small island commonly called and known by the name of My Lord's Island, extending down the Potomac River various courses 3,152 poles, making a southwesterly line to a pokecory standing at the north point of a creek named by the English Indian Cabin Creek, which creek divides this land and the tract of land surveyed by John Matthews, from the said pokecory northwest and by west by the said creek and main branch 520 poles; from thence north 940 poles, finally east 720 poles to the red oak begun at, including several small creeks and inlets for the said quantity of land."

The effect of this grant upon the present controversy may be disposed of by reference to the patent which does not purport to convey

nd in the river proper. The river boundary starts at a point on e land and extends down the river, not by a straight line, but by arious courses" in a southwest line to another point on the land. or could the Governor of Virginia grant to Howsing title to soil nder the river which thirty-seven years before had been vested in e Maryland proprietary.

On March 28, 1785, a compact was entered into — Virginia and aryland, which, among other things, provides:

"Sixth. The river Patowmack shall be considered as a common ghway for the purpose of navigation and commerce to the citizens Virginia and Maryland, and of the United States, and to all other rsons in amity with the said states trading to or from Virgina or aryland."

"Seventh. The citizens of each state respectively shall have full operty in the shores of the Patowmack River adjoining their lands, ith all emoluments and advantages thereunto belonging, and the rivilege of making and carrying out wharves and other improvements so as not to obstruct or injure the navigation of the river," etc.

This compact, considered as a whole, seems not to have related to he question of boundary, but to the establishment of a system hereby the two States and the citizens thereof could amicably use nd police the waters of the Chesapeake Bay and the Potomac and ocomoke Rivers. The subject-matter of the agreement was use and risdiction, not sovereignty. While it is stated in the compact that he boundary on the Chesapeake and Pocomoke is doubtful, no atempt was made to adjust it, and nothing whatever is said as to the oundary on the Potomac.

By repeated decisions of the courts of this District, it has been eld that the jurisdiction of the United States within the District of olumbia extends over the Potomac River to the line of high water n the Virginia shore. Alexandria Canal Co. vs. District of Columia, supra; Smoot vs. District of Columbia, 23 App. D. C., 266, 271; vans vs. United States, 31 App. D. C., 544; Jefferson vs. District f Columbia, 40 App. D. C., 381, 383. In the Alexandria Canal ompany case, the court sustained the power of the District to ssess and collect taxes upon the Aqueduct Bridge up to the high-ater line on the Virginia shore. In the Smoot and Jefferson cases, t was held that the police power as exercised by the District extends ver the entire river. In the Evans case the authority of the District o arrest and prosecute persons fishing in the waters of the Potomac rom the Virginia shore was sustained.

The holding in these cases is grounded in no small degree upon he theory that Congress has politically determined the territorial imits of the District of Columbia. In the first section of the Revised Statutes of the United States affecting the District of Columbia, approved June 22, 1874, Congress defined the District to be "that portion of the territory of the United States ceded by the State of Maryland for the permanent seat of Government of the United States, including the River Potomac in its course through the District and the slands therein." Thus it appears that not only has Congress legislated upon the basis that the entire river is embraced within the District, but the record shows that the municipal corporation, as the ex-

ecutive agency of the Government for the enforcement of police power, has claimed and exercised, and still claims and exercises, jurisdiction to the high-water mark on the Virginia side. This, it would seem, constitutes a political determination of the territorial limits binding upon the courts of this jurisdiction. As was said in State vs. Dunwell, 3 R. I., 127, 128: "This exception assumes to bring in question the eastern boundary line of this State. Where that line is, de jure, is a political question, with which the Courts of the State will not intermeddle. Sufficient for them is it that the State has always claimed jurisdiction up to and 'along the easterly side or bank' of the Seekonk river, and exercised it in fact. The Courts are bound to take cognizance of the boundaries in fact claimed by the State."

In the recent case of Maryland vs. West Virginia, 217 U. S., 577, the court, considering the award of 1878, by which the boundary between the States of Maryland and Virginia was fixed at the low-water line on the Virginia shore, held, in effect, that this line had been established by the compact of 1785. The United States was not a party to the award of 1878, and her status with respect to the boundary between the District of Columbia and Virginia was not involved. However, as we interpret the opinion, it holds that the boundary was established at low-water mark by the compact of 1785, and, unless affected by the exercise of political jurisdiction by the United States, it likewise fixes the boundary of the District of Columbia as ceded by Maryland in 1789, four years after the compact; since whatever territory and right to the soil under the Potomac was ceded to the United States by Virginia in 1789 was receded in 1846.

Coming now to the rights attempted to be asserted by the defendant company in this case, they are inconsistent with the very nature of title to the bed of navigable waters. The title of Maryland in the soil below tide water in the Potomac was established upon too firm a foundation to be shaken by private land grants upon the Virginia shore. The sovereign ownership of the bed of a navigable river within the ebb and flow of the tide belongs by virtue of the prerogative or sovereignty and is held in trust for the nation and subject to public uses. Such was the nature of all the grants along the Atlantic, including the grant to Lord Baltimore. As said in the Morris case, "The various charters granted by different monarchs of the Stuart dynasty for large tracts of territory on the Atlantic coast conveyed to the grantees both the territory described and the powers of government, including the property and dominion of lands under tide waters." And in the same case the court held that the title in the Crown to the soil under navigable waters is held in trust for the use of the whole community, "and not as private property, to be parcelled out and sold for his individual emolument." With the American Revolution, all the rights of the Crown and Parliament in the navigable waters and the soil under them, became vested in the States, subject to the rights surrendered later to the National Government by the commerce clauses of the Constitution. So sacred is this trust that it has been universally held, not only that a grant of the sovereign to the bed of a public waterway must be in express terms, but it must be with the consent of the legislative department of the

Government. Martin vs. Waddell, 16 Pet., 367, 410. It is, therefore, inconsistent with every principle upon which the title to the soil under public waterways is protected to hold that defendant, or its predecessors in interest, by virtue of their title in the fast lands adjoining tide water acquired any title adverse to that of the State of Maryland or its successor in interest, the United States.

Nor is the contention of counsel for defendant more tenable on the question of jurisdiction, either as to the Corporation of the City of Alexandria or the State of Virginia over the bed of the Potomac river. By the compact of 1785 concurrent jurisdiction on the waters of the Potomac was established between the two sovereignties of Maryland and Virginia. Such compacts are common in this country over the waters of navigable streams. But as to the bed of the river the jurisdiction in the sovereignty to which it belongs is not thereby affected. As was said in the case of Wedding vs. Meyler, 192 U. S., 573, 584, where the court was considering the effect of a similar compact between the State of Kentucky and the State of Indiana affecting the waters of the Ohio: "What the Virginia compact most certainly conferred on the States north of the Ohio, was the right to administer the law below low-water mark on the river, and, as part of that right, the right to serve process there with effect. State vs. Mullen, 35 Iowa, 199, 205, 206. What more jurisdiction, as used in the statute, may embrace, or what law or laws properly would determine the civil or criminal effect of acts done upon the river we have no occasion to decide in this case. But so far as applicable we adopt the statement of Chief Justice Robertson in Arnold vs. Shields, 5 Dana, 18, 22: 'Jurisdiction, unqualified, being, as it is, the sovereign authority to make, decide on, and execute laws, a concurrence of jurisdiction, therefore, must entitle*d* Indiana to as much power—legislative, judiciary, and executive, as that possessed by Kentucky over so much of the Ohio River as flows between them.' The conveniences and inconveniences of concurrent jurisdiction both are obvious and do not need to be stated. We have nothing to do with them when the law-making power has spoken. To avoid misunderstanding, it may be well to add that the concurrent jurisdiction given is jurisdiction 'on' the river, and does not extend to permanent structures attached to the river bed and within the boundary of one or the other State." A similar rule has been announced in Central R. R. Co. vs. Jersey City, 209 U. S., 473; Nielson vs. Oregon, 212 U. S., 315; McGowan vs. Columbia River Packers' Assn., 245 U. S., 352; Nicoulin vs. O'Brien, 248 U. S., 113.

The compact of 1785 between Maryland and Virginia fundamentally dealt with the matter of the exercise of concurrent jurisdiction over the waters of the Potomac. Hence, whatever be the right of the State of Virginia, or its executive agency, the municipal corporation of Alexandria, not parties to this controversy, to exercise criminal and civil jurisdiction over the waters of the Potomac, such jurisdiction can in no way affect the title which the United States, as the successor of Maryland, has in the soil beneath the Potomac River.

Nor is this affected by section 2 of the Act of Congress of 1826 (4 Stat. L., 163,) which, among other things, provides that the common

council of Alexandria "shall have power to preserve the navigation of the Potomac river, within their jurisdiction; to erect, repair, and regulate public wharves, deepen docks and basins, and to limit the extension of private wharves, into the harbour." This extended only to the exercise of police jurisdiction over the harbor and harbor improvements, and did not amount to a surrender by Congress of its supervision of commerce even in the harbor of Alexandria, or to the surrender of the title of the United States in the bed of the river.

Nor is it important, as appears from the record, that by filling in the Potomac front adjacent to the City of Alexandria there has been added to the fast lands many blocks of ground which are occupied by the citizens of Virginia and on which the municipality and the State are collecting taxes. It is unnecessary to consider these matters, or what, if any, prescriptive rights may have accrued by adverse possession, since, as to Battery Cove—the property in question—no such condition or occupation at any time existed prior to the date when the Government improvements were authorized in 1911.

Defendant's contention, based upon the doctrine of riparian rights, is likewise untenable. Whatever rights a riparian owner on the banks of a navigable steam may have against individuals, or the unorganized public, or even the general public as represented by the Government, must yield to commercial necessity. Greenleaf Lumber Co. vs. Garrison, 237 U. S., 251. The basis of the rule is clearly stated in Sage vs. The Mayor, 154 N. Y., 61, 69, and quoted with approval in Scranton vs. Wheeler, 179 U. S., 141, 152, as follows: "I think that the rule rests upon the principle of implied reservation, and that in every grant of lands bounded by navigable waters where the tide ebbs and flows, made by the Crown or the State as trustee for the public, there is reserved by implication the right to so improve the water front as to aid navigation for the benefit of the general public, without compensation to the riparian owner. The implication springs from the title to the tideway, the nature of the subject of the grant and its relation to navigable tidewater, which has been aptly called the highway of the world. The common law recognizes navigation as an interest of paramount importance to the public."

Not only is defendant deprived of the right of compensation by reason of having its access to the river cut off, but its title to the reclaimed soil below low-water mark stands upon no better foundation. No right is asserted by virtue of any grant by the sovereign of title to the bed of the river below low-water mark within the reclaimed limits, or of occupation by wharfage, or otherwise. For ought that the record discloses, this cove, at the time the Government work began, was in the same condition as when granted by Lord Baltimore. A similar question arose in Morris vs. United States, supra, wherein the title to certain reclaimed lands in the Potomac flats in the City of Washington was involved. It was held that, in the absence of a special grant by Congress of the bed of the river which in the improvement of navigation had been reclaimed, the title to the reclaimed land remained in the United States. The rule is without exception that, so long as the sovereign remains owner of submerged soil, it retains the fee of the soil reclaimed. Barney vs. Keokuk, 94

. S., 324; Hoboken vs. Penna. R. Co., 124 U. S., 656; Illinois Central R. Co. vs. Illinois, 146 U. S., 387.

Whatever view is taken of the West Virginia case, the judgment must be affirmed. Appellant pleaded nothing but the general issue, and was found in possession of the land demanded. His pleading therefore, must be construed as making defence for the whole. Greer v. Mezes, 24 How., 268, 277.

Affirmed.

Friday, April 9th, A. D. 1920.

No. 3312, April Term, 1920.

MARINE RAILWAY AND COAL COMPANY, INC., a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed.

Per MR. JUSTICE VAN ORSDEL.

April 9, 1920.

Court of Appeals of the District of Columbia, October Term, 1919.

No. 3312.

MARINE RAILWAY & COAL COMPANY, INC., Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Petition for Writ of Error.

Comes now the Marine Railway & Coal Company, Incorporated, defendant and appellant in the above entitled cause, and respectfully shows that, on or about the 9th day of April, 1920, the Court of Appeals of the District of Columbia, entered a judgment herein in favor of the Appellee and against the Appellant, affirming the judgment of the Supreme Court of the District of Columbia, in favor of the Appellee; in which judgment of this Court certain errors were committed to the prejudice of the appellant, all of which will more fully and in detail appear from the assignments of errors filed with this petition.

The Appellant (defendant) further shows that Section 250 of the Judicial Code of the United States thus provides:

"Sec. 250. Any final judgment or decree of the Court of Appe
of the District of Columbia may be re-examined and affirmed, r
versed or modified by the Supreme Court of the United States, upo
a writ of error or appeal in the following cases:

First. In cases in which the jurisdiction of the trial Court is
issue.

Sixth. In cases in which the construction of any law of the Unit
States is drawn in question by the defendant.

The Appellant (defendant) further shows that, it is advised
Counsel that the judgment of the Court of Appeals of the District
Columbia in this case is subject to review by the Supreme Court
the United States, under the provisions of Para. 1, of said Sec. 2
of said Judicial Code, for that there is drawn in question the jur
diction of the trial Court, the Supreme Court of the District of C
lumbia, to hear and determine this case, by the Appellant's (defen
ant's) plea to the jurisdiction and the Appellee's (plaintiff's) genet
replication thereto, and joinder of issue thereon.

The Appellant (defendant), further shows that, it is advis
by Counsel that the judgment of the Court of Appeals of the Distr
of Columbia in this case is subject to review by the Supreme Co
of the United States, under the provisions of Paragraph 6, of said S
tion 250, of said Judicial Code, for that there is drawn in question
the Appellant (defendant), the construction of certain laws of t
United States, in their relation to, and effect upon the question of t
territorial boundary between the District of Columbia and the St
of Virginia, also in their relation to, and effect upon the rights
the State of Virginia thereunder, as follows:

1. The act of Congress, approved July 9, 1846, entitled, "An A
to retrocede the County of Alexandria, in the District of Columbia,
the State of Virginia.

2. The Act of Congress, approved June 22, 1874, entitled "
Act to revise and consolidate the Statutes of the United States, g
eral and permanent in their nature, relating to the District of C
lumbia, in force on the first day of December 1873, Chap. 1, Orga
zation and government: Sec. 1. Territorial area.

3. The Act of Congress, approved March 3, 1879, entitled "
Act giving the consent of Congress to an Agreement or compact
tered into between the States of Virginia, and Maryland, respecti
the boundary between the said States.

The Appellant (defendant) further shows that, the construct
placed upon said Statutes by the decision of this Court, the Appell
(defendant) has been deprived of its vested rights in the parcel
land, described in the Appellee's (plaintiff's) declaration.

The Appellant (defendant) further shows that, the States
Maryland and Virginia, on the 28th day of March 1785, entered i
an agreement or compact relating to the Potomac River, the jurisd
tion over the same, and the rights of the respective states to be

joyed therein, and to be secured thereby, for the use and benefit of the citizens of said States, respectively.

The Appellant (defendant) further shows that it is advised by Counsel, that the judgment of the Court of Appeals of the District of Columbia, is subject to review by the Supreme Court of the United States, for that there is drawn in question by the Appellant (defendant), the construction of said compact, and particularly the 6th and 7th paragraphs thereof in relation to the boundary between said States, and the proprietary and other rights secured to the State of Virginia thereby for the use and benefit of her citizens.

The Appellant (defendant) further shows that the construction placed upon said compact, and particularly the sixth and seventh paragraphs thereof in relation to the boundary between said State, and the proprietary and other rights secured to the State of Virginia thereby for the use and benefit of her citizens, by the decision of this Court, the Appellant (defendant), has been deprived of its vested rights in the parcel of land described in the Appellee's (plaintiff's) declaration.

Wherefore, the Appellant (defendant) prays that a writ of error may issue in this behalf out of the Supreme Court of the United States to the Court of Appeals *in* the District of Columbia, for the correction of the errors so complained of, and that a transcript of the record proceedings and papers in this case duly authenticated may be sent to the Supreme Court of the United States; and that the mandate of this Court be stayed until further order; and penalty fixed for appeal bond.

THE MARINE RAILWAY & COAL COMPANY, INC.,
By J. R. CATON, *Attorney.*

(Endorsed:) No. 3312. Marine Railway & Coal Co., Inc., Appellant, vs. United States of America, Appellee. Petition for Writ of Error. Court of Appeals, District of Columbia. Filed April 27, 1920. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia, October Term, 1919.

No. 3312.

MARINE RAILWAY & COAL COMPANY, INC., Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Assignments of Errors.

And now comes the Appellant (defendant) by its attorney, and says, that in the record and proceedings of the Court of Appeals of the District of Columbia, in the above entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of the said Appellant (defendant), to-wit:

One. In holding that the grant to Robert Howsing of October 21, 1669, by Sir William Berkeley, Governor of the Colony of Virginia, does not include within the said grant, the creeks, inlets, bays, coves, and indentations along the shore of the Potomac River to make up the quantity of land stated and described in the said grant, and in holding that the said grant together with the other facts in the record, does not establish by prescription territorial boundary, right, sovereignty, and jurisdiction, in the State of Virginia, so as to include Battery Cove and the parcel of land described in the Appellee's (plaintiff's), declaration, within the territorial boundary, right, sovereignty and jurisdiction of said State, and the subject matter of this suit within the jurisdiction of its Courts.

Two. In failing to hold that the grant of Robert Howsing, October 21, 1669, by Sir William Berkeley, Governor of the Colony of Virginia, under the seal of said Colony, was a crown grant, prior and adverse to the Culpepper grant of 1788, and in connection with the other facts in the record, establishes by prescription, territorial boundary, right, sovereignty and jurisdiction in the State of Virginia, so as to include Battery Cove and the parcel of land described in the Appellee's (plaintiff's) declaration, within the territorial boundary, right, sovereignty, and jurisdiction of said State, and the subject matter of this suit within the jurisdiction of its Courts.

Three. In holding that the compact of March 28, 1785, between the States of Maryland and Virginia, does not relate to or affect the question of boundary between said States, but relates only to the establishment of a system of jurisdiction whereby the two states and the citizens thereof could amicably use and police the waters of the Chesapeake Bay, and the Pocomoke and Potomac Rivers, and in holding that the subject matter of said compact was one of use and jurisdiction only, and not of sovereignty.

Four. In failing to hold that paragraphs 6 and 7 of the compact of March 28, 1785, between the states of Maryland and Virginia, did relate to and affect the question of boundary between said states, and that said paragraphs of said compact vested in the State of Virginia, for the use and benefit of her citizens, the right of access to and the use of the Potomac River, and that said paragraphs of said compact vested in the State of Virginia, for the use and benefit of her citizens, property in the shores of the Potomac River, together with all emoluments and advantages thereto belonging, and the proprietary or property right of making and carrying out wharves and other structures into the Potomac River so as not to obstruct or injure the navigation of the river, as appurtenant to the highlands of Virginia, bordering on the Virginia shores of the Potomac River.

Five. In holding that the first section of the revised statutes of the United States affecting the District of Columbia, approved June 22, 1874, fixes the boundary of said District at high water mark on the Virginia side of the Potomac River, and in holding that where that line is, de-jure, is a political question, and is conclusive upon the Court in this case.

Six. In holding that the case of Maryland vs. West Virginia, reported 217 United States, p. 577, fixes the boundary line between Maryland and Virginia at mean low water mark on the Virginia shore of the Potomac River.

Seven. In holding that the United States was not a party to the arbitration and award of 1878, between the States of Maryland and Virginia and that the status of the United States with respect to the boundary between the District of Columbia and the State of Virginia, was not involved in that arbitration, and award.

Eight. In failing to hold that the compact between the State of Maryland and the State of Virginia of 1785, was a boundary question, between said states, and that the provisions of Paragraphs 6 and 7 of said compact did involve the question of boundary between said states, according to the true interpretation and meaning of said compact; and in failing to hold that the arbitration and award of 1878, between said states did effect the status of the Appellee (plaintiff) with respect to the boundary between the District of Columbia, and the State of Virginia; and in failing to hold that by the Act of Congress of 1879, consenting to said arbitration and award, and each and every article thereof, the Appellee (plaintiff), became a party to the said arbitration and award by consent, adoption and ratification as fully and completely as if it had been a party thereto at the inception of the agreement for said arbitration and award.

Nine. In holding that the State of Virginia, had no jurisdiction of the soil under the waters within the lines of the Howsing grant, or within Battery Cove, by prescription based upon said Howsing grant, and the other facts and circumstances in the record of this case, prior to the said Cove being filled by the United States Government in the improvement of the Potomac River at Alexandria, Virginia, under the acts of Congress of 1910 and 1911; and in holding upon the record and the facts in this case, that the Howsing grant did not include the soil under the waters of the Potomac River, within the creeks, bays, coves, inlets and indentations along the Virginia shore of said river.

Ten. In failing to hold upon the record and the facts in this case, that the State of Virginia acquired territorial right, dominion, sovereignty and jurisdiction by prescription, of the soil under the waters of the Potomac River within the creeks, bays, coves, inlets, and indentations along the Virginia shore of said river, within the lines of the Howsing grant, including the soil under the waters in said Battery Cove, and including the parcel of land in controversy, and as well by virtue of the compact between Maryland and Virginia of 1785, and of the arbitration and award between said States of 1878, and of the consent thereto by Congress in its act of 1879.

Eleven. In holding that the rights and privileges granted to the State of Virginia by the State of Maryland by virtue of paragraphs 6 and 7 of the compact of 1785, did not vest in Virginia, for the use and benefit of her citizens the right of access to the Potomac River, in front of the highlands bordering thereon, and did not vest in said

State by virtue of the privilege of extending wharves and other structures beyond the line of low water mark into the Potomac River, so as not to interfere with the navigation of said river, property right or rights appurtenant to the highland for the use and benefit of her citizens; and in failing to hold that the right secured to the State of Virginia by said compact to build wharves and other structures into the Potomac River, so as not to interfere with the navigation thereof, constituted a proprietary or property right in the soil for such uses and purposes, for the use and benefit of the citizens of the State of Virginia.

Twelve. In failing to hold that the rights, property, privileges, and emoluments, secured to Virginia by virtue of Paragraphs 6 and 7 of the compact between Maryland and Virginia of 1785, for the use and benefit of her citizens, and of other facts in the record, were incorporated in and became a part of the territorial right, sovereignty, dominion and jurisdiction of said State, for the uses and purposes therein set forth.

Thirteen. In failing to hold that by virtue of the arbitration and award of 1878, between the States of Maryland and Virginia, and of the consent thereto by Congress, that the low water mark on the Potomac to which Virginia has a right and in the soil, is to be measured from low water mark at one headland to low water mark at another without following indentations, bays, creeks, inlets or affluent rivers, and that said boundary line so fixed was the boundary line between the States of Maryland and Virginia, as of 1785, agreeably to the compact between said States of March 28, 1785, and that such line is the present line of boundary between the District of Columbia, and the State of Virginia, and includes within the territorial boundary, sovereignty, and jurisdiction of Virginia, and the jurisdiction of its Courts, the parcel of land in controversy in this suit.

Fourteen. In holding that the parcel of land in the Appellee's (plaintiff's) declaration mentioned, is within the territorial boundary, sovereignty, and jurisdiction of the District of Columbia, and within the jurisdiction of the Supreme Court of the District of Columbia, and in refusing to hold that the said parcel of land is within the territorial boundaries, sovereignty, and jurisdiction of the State of Virginia, and within the jurisdiction of the Courts of said State.

Fifteen. In failing to hold that the land made in Battery Cove by the United States Government in the course of the improvement of the Potomac River at Alexandria, Virginia, under the acts of Congress of 1910 and 1911, lies between a line drawn from Jones' Point, at low water mark, to Point Lumley, at low water mark, and includes the parcel of land in controversy in this suit, and is within the territorial boundaries, sovereignty, dominion and jurisdiction of the State of Virginia, and is within the jurisdiction of the Courts of said State.

Sixteen. In holding that the Appellee (plaintiff) is entitled to recover of the Appellant (defendant), the fee of the parcel of land

described in the Appellee's (plaintiff's) declaration and all rights, and appurtenances thereto belonging.

Seventeen. In affirming the judgment of the Supreme Court of the District of Columbia rendered in this case, and remanding this case to said Court.

Wherefore, Appellant (defendant), prays that for the errors aforesaid and other errors appearing in the record of said Court of Appeals, in said cause to the prejudice of Appellant (defendant), the judgment of said Court of Appeals may be reversed, annulled and for naught held; and that said case, thereupon be remanded to said Court of Appeals with instructions to reverse the judgment of the Supreme Court of the District of Columbia, in said case rendered, and for such further proceedings in said cause as may be determined by the Supreme Court of the United States, to the end that justice may be done in the premises.

THE MARINE RAILWAY & COAL COMPANY,
By JAS. R. CATON, *Attorney.*

(Endorsed:) No. 3312. Marine Railway & Coal Co., Inc., Appellant, vs. United States of America, Appellee. Assignments of Errors. Court of Appeals, District of Columbia. Filed April 27, 1920. Henry W. Hodges, Clerk.

Saturday, May 1st, A. D. 1926.

No. 3312.

MARINE RAILWAY AND COAL COMPANY, INC., a Corporation, Appellant,

vs.

UNITED STATES OF AMERICA.

On consideration of the petition for the allowance of a writ of error to remove the above entitled cause to the Supreme Court of the United States, It is ordered by the Court that said writ issue as prayed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Marine Railway and Coal Company, Inc., a corporation, appellant, and United States of America, appellee, a manifest error hath happened, to the great damage of the

said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 5th day of May, in the year of our Lord one thousand nine hundred and twenty.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

____ ____.

Court of Appeals of the District of Columbia, October Term, 1919.

No. 3312.

MARINE RAILWAY & COAL COMPANY, INC., Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Bond on Writ of Error.

Know all Men by these Presents, That we, The Marine Railway and Coal Company, a corporation duly chartered organized and existing under the laws of the State of Virginia, by James R. Caton, its attorney in fact as principal, and Colin H. Livingstone, as surety, are held and firmly bound unto the United States of America in the full and just sum of Three Hundred dollars, ($300), to be paid to the said United States of America, its successors and assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents. Sealed with our seals, and dated this 3rd day of May in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court between the said Marine Railway and Coal Company, Incorporated, as Appellant, and the United States of America, as Appellee, a judgment was rendered against the said Appellant and in favor of said Appellee, and the said Appellant having obtained a writ of error and filed a copy thereof in the Clerk's

Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Marine Railway and Coal Company, Incorporated, Appellant, as aforesaid, shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of the Marine Railway and Coal Company, Inc.]

THE MARINE RAILWAY AND COAL COMPANY, INC.,

By JAS. R. CATON, [SEAL.]
Attorney in Fact.

COLIN H. LIVINGSTONE. [SEAL.]

——— ———, [SEAL.]

By ——— ———. [SEAL.]

Sealed and delivered in the presence of:

CHAS. H. ST. JOHN.
WM. MORETON.
W. W. SCOTT.

Approved by:

CONSTANTINE J. SMYTH,
Chief Justice Court of Appeals,
of the District of Columbia.

Endorsed: No. 3312. Marine Railway & Coal Co., Inc., Appellant, vs. United States of America. Bond on Writ of Error. Court of Appeals, District of Columbia. Filed May 5, 1920. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Marine Railway and Coal Company, Inc., a corporaton, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth Chief Justice of the

Court of Appeals of the District of Columbia, this 5th day of May, in the year of our Lord one thousand nine hundred and twenty.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 5th day of May A. D. 1920.
HENRY H. GLASSIE.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 5, 1920. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia, October Term, 1919.

No. 3312.

MARINE RAILWAY & COAL COMPANY, INC., Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Designation of Record.

The Clerk of said Court will please include in the transcript of Record on the writ of error, to the Supreme Court of the United States of America, in the above entitled cause, the following:

(1) Transcript of the Record and Judgment of the Supreme Court of the District of Columbia.

(2) The Opinion and Judgment of the Court of Appeals of the District of Columbia.

(3) Petition for writ of error to the Supreme Court of the United States.

(4) Assignments of errors of the Court of Appeals of the District of Columbia.

(5) Order awarding writ of error.

(6) Bond on writ of error.

(7) The Citation.

(8) The Designation.

JAS. R. CATON,
Attorney for Appellant.

Service of a copy of the above designation acknowledged this 28th day of April, 1920.

HENRY H. GLASSIE,
Attorney for Appellee.

(Endorsed: No. 3312. Marine Railway & Coal Co., Inc., Appellant, vs. United States of America, appellee. Designation of Record. Court of Appeals, District of Columbia. Filed May 5, 1920. Henry W. Hodges, Clerk.)

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 223 inclusive constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Marine Railway and Coal Company, Inc., a corporation, Appellant, vs. United States of America, No. 3312, April Term, 1920, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 5th day of May A. D. 1920.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 27,665. District of Columbia Court of Appeals. Term No. 910. Marine Railway and Coal Company, Inc., plaintiff in error, vs. United States of America. Filed May 7th, 1920. File No. 27,665.

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MARINE RAILWAY AND COAL COMPANY, INC.,
Defendant in Error,

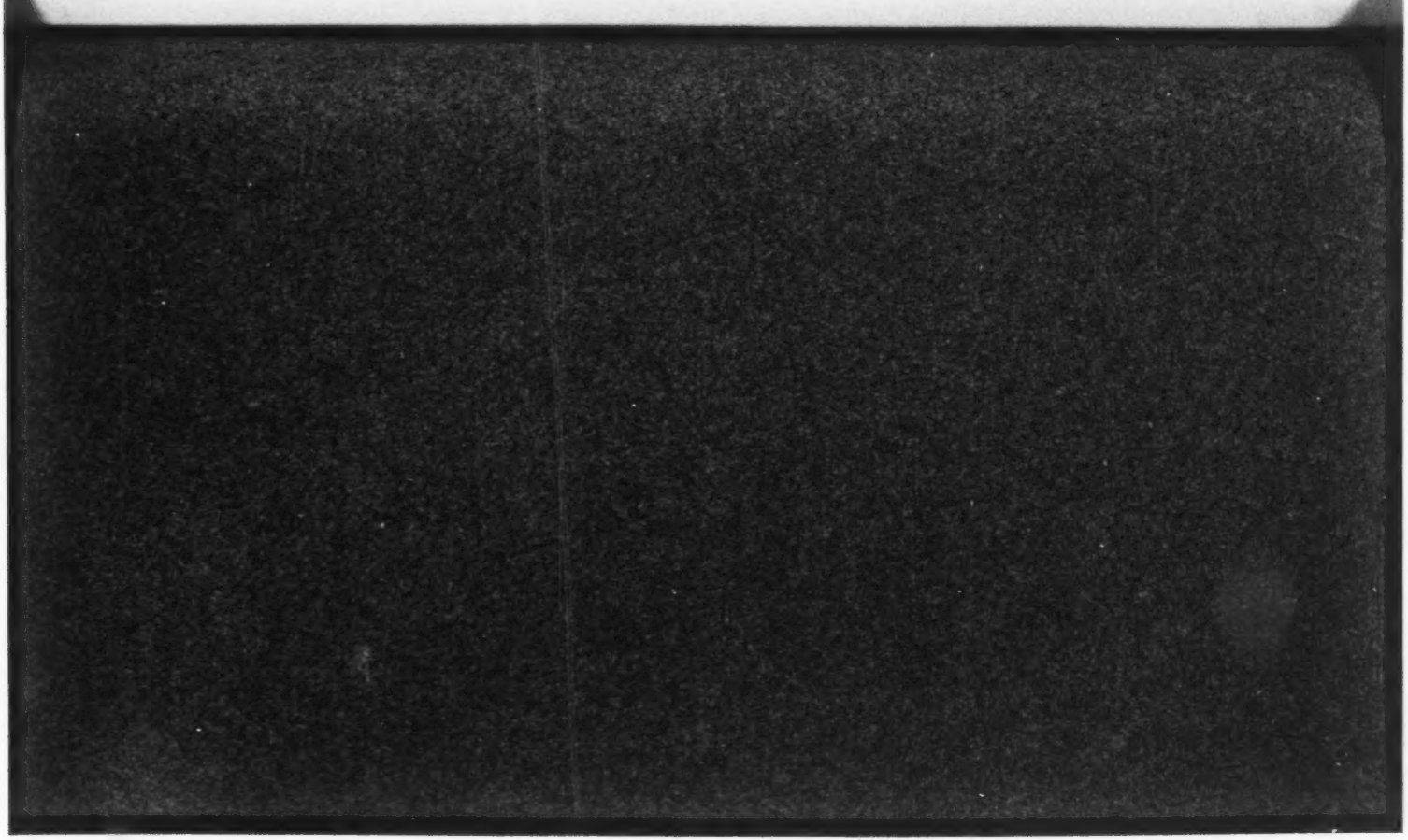
vs.

UNITED STATES OF AMERICA,
Plaintiff in Error.

In Error to the Court of Appeals of the District of Columbia.

BRIEF OF PLAINTIFF IN ERROR.

JAMES R. CATON,
Counsel for Plaintiff in Error.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

NO. 910.

MARINE RAILWAY AND COAL COMPANY, INC.,

PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA,

DEFENDANT IN ERROR.

In Error to the Court of Appeals of the District of Columbia.

BRIEF OF PLAINTIFF IN ERROR

Upon a Writ of Error to the Judgment of the Court of Appeals of the District of Columbia, rendered on the 9th day of April, 1920, affirming the judgment of the Supreme Court of the District of Columbia, rendered on the 25th day of June, 1919.

Statement of Case.

The defendant, in error, sued the plaintiff, in error, in the Supreme Court of the District of Columbia, in ejectment, to recover the fee of the real estate and premises described in the declaration, to-wit:

BEGINNING at a point 262.47' south of the center line of Franklin Street, and 54.6' east of the west line of Union Street, measured at right angles thereto, said point being the end of a fence and running thence (1) North 74°, 52' 10", east 368' more or less to a point; thence (2) by a straight line 172' more or less to the northwestern end of retaining wall; thence (3) 195' more or less along retaining wall, as said wall runs to a point; thence (4) North 80° 49' West 632' more or less, along a line parallel to the center line of Franklin Street to the point of beginning, containing 1.4 acres of land. See declaration (pages 1 and 2, and Exhibit "A," after page 172, printed record).

The plaintiff, in error, filed a plea to the jurisdiction of the Trial Court, to which the defendant, in error, replied generally, and issue was joined (pages 2 and 3, printed Record).

The plaintiff, in error, claims title and jurisdiction in Virginia, because the disputed territory lies between a line drawn from Jones' Point, at low water mark, to Point Lumley, at low water mark and the Virginia shore of the Potomac River, agreeably to the charters of the Colony of Virginia, 1606-9-11 and 12; the Howsing grant of 1669; the Compact of 1785, between Maryland and Virginia, and the arbitration of 1878, between said States, consented to by Congress.

The defendant, in error, claims title and jurisdiction, because the land lies below high water mark on the Virginia shore of the river, and therefore a part of the District of Columbia, agreeably to the charter by Charles I, of the Province of Maryland, to Cecil Calvert in 1632, and the cession by Maryland of territory for the seat of the Federal Government in 1788-1791.

On the trial of the issue upon the plea to the jurisdiction, a trial by jury was waived, and all questions of fact, and of

of law, were submitted to the Court for hearing and decision (page 109, printed Record).

All matters of fact offered in evidence by the respective parties upon the trial of the issue on the plea to the jurisdiction, are contained in the stipulations of fact, filed respectively, January 17, 1916; April 21, 1916, and November 22, 1916 (pages 3 to 109, inclusive, printed Record).

The defendant, in error, offered in evidence the two surveys or plats designated as Exhibits "A" and "B," and the charters, grants, statutes, treaties, compacts, deeds, instruments, proceedings and other documentary evidence set forth in the stipulation filed January 17, 1916, indicated under Roman numerals as follows:

(*a*) I. Paragraphs "A" to "K," both inclusive.
III. Paragraphs "A" to "X," both inclusive.
VI. Paragraphs "A" to "I," both inclusive.
VIII. Paragraphs "I" to "22," both inclusive.

(Pages 4 to 7, inclusive; 11 to 31, inclusive; 79 to 84, inclusive, and 86 to 91, inclusive, printed Record, and exhibits, end of printed Record.)

(*b*) The matters of fact set forth in the stipulation of evidence of the defendant in error, filed November 22, 1916 (pages 106 to 109, inclusive, printed Record).

The plaintiff in error offered in evidence the surveys or plats, Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and two numbered 16, together with House Document No. 1253, Sixtieth Congress, second session, and other memoranda and explanations accompanying the exhibits, and the charters, grants, statutes, treaties, compacts, deeds, instruments, proceedings, and other documentary evidence set forth in the stipulation filed January 17, 1916, indicated under Roman numerals as follows:

(*a*) II. Paragraphs "A" to "G," both inclusive.
IV. Paragraphs "A" to "&," both inclusive.
V. Paragraphs "A" to "M," both inclusive.
VII. Paragraphs "I" to "6," both inclusive.

(Pages 7 to 11, inclusive; 31 to 68, inclusive; 68 to 79, inclusive, and 84 and 85, printed Record, and all the exhibits except "A" and "B," end of printed Record.)

(*b*) The stipulation of supplementary evidence, filed April 21, 1916, paragraphs "A" to "Q," both inclusive (pages 91 to 106, inclusive, printed Record).

The court having heard all the evidence offered on the trial of the issue upon the plea to the jurisdiction, the plaintiff in error moved the court to rule as a matter of law as appears, page 110, printed Record.

To which motion and ruling the defendant in error objected, which objection the court sustained and refused to rule as prayed, and the plaintiff in error excepted (page 110, printed Record).

The defendant in error then moved the court to rule as a matter of law as appears pages 110 and 111, printed Record.

To which motion and ruling the plaintiff in error objected, objection overruled and the plaintiff in error excepted.

Thereupon the court found for the defendant in error upon the issue joined on the plea to the jurisdiction, and overruled said plea.

To this finding and ruling of the court the plaintiff in error excepted, and tendered its bill of exceptions, which were duly signed and sealed and made a part of the record (pages 110-111, printed Record).

The plaintiff in error then pleaded the general issue plea of "not guilty"; the defendant in error replied generally, and issue was joined (pages 111 and 112, printed Record).

All matters of fact offered in evidence by the respective parties on the trial of the general issue are contained in the stipulations of fact filed, respectively, January 17, 1916; April 21, 1916; November 22, 1916, and May 23, 1919, and the exhibits filed therewith.

The defendant in error offered in evidence on the trial of the general issue, the two plats or surveys designated as Exhibits "A" and "B," and the charters, grants, statutes, treaties, compacts, deeds, instruments, proceedings, and the other documentary evidence set forth in the stipulations of January 17, 1918, indicated under Roman numerals, as follows:

(*a*) I. Paragraphs "A" to "K," both inclusive.
III. Paragraphs "A" to "X," both inclusive.
VI. Paragraphs "A" to "I," both inclusive.
VIII. Paragraphs "1" to "22," both inclusive.

(Pages 4 to 7, inclusive; 11 to 31, inclusive; 79 to 84, inclusive, and 86 to 91, inclusive, printed Record.)

(*b*) The matters of fact contained in the stipulation of evidence, filed November 22, 1916 (pages 106 to 109, inclusive, printed Record).

The plaintiff in error objected to the admissibility in evidence on the trial of the general issue, of all matters of fact offered in evidence by the defendant in error, upon the grounds set forth (pages 156 to 159, inclusive, printed Record).

Thereupon the court, as and when each of said statements of matters of fact, documents, plats, and exhibits, stated and referred to in the stipulations of January 17, 1916, and November 22, 1916, were offered in evidence by the defendant in error, to maintain the issue on its part, upon the general issue, overruled the objection of the plaintiff in error to the same, so far as concerns the trial of the general issue, and as offered to show title on the part of the said defendant in error, to the premises described in the declaration; to which ruling of the court, in respect of each and every statement of matters of fact, documents, plats and exhibits so offered in evidence by the defendant in error, the plaintiff in error duly excepted (page 159, printed Record).

The plaintiff in error offered in evidence on the trial of the general issue the plats filed as Exhibits Nos. 1 to 16, both inclusive, together with House Document No. 1253, Sixtieth Congress, second session, and the memoranda and explanations accompanying said exhibits and other exhibits (except "A" and "B"), end of printed Record.

The charters, grants, statutes, treaties, compacts, deeds, instruments, proceedings and other documentary evidence set forth in the stipulations filed, respectively, January 17, 1916; April 21, 1916, and May 23, 1919, to-wit:

The stipulation of January 17, 1916, indicated under Roman numerals—

(*a*) II. Paragraphs "A" to "G," both inclusive.
IV. Paragraphs "A" to "&," both inclusive.
V. Paragraphs "A" to "M," both inclusive.
VII. Paragraphs "1" to "6," both inclusive.

(Pages 7 to 11, inclusive; 31 to 68, inclusive; 68 to 79, inclusive, and 84 and 85, printed Record.)

(*b*) The matters of fact contained in the stipulation of supplementary evidence, filed April 21, 1916, from paragraphs "A" to "Q," both inclusive, (pp. 92 to 106, inclusive, printed Record).

(*c*) The matters of fact contained in the stipulation of evidence, filed May 23, 1916, (pp. 113 to 152, inclusive, printed Record).

The defendant in error objected to the admissibility in evidence on the trial of said issue, of all the matters of fact and exhibits offered by the plaintiff in error, except paragraph 96, as to the amendment of the charter of the plaintiff in error, the letters Nos. 1 and 2, and the statement following the said letters, contained in the stipulation of May 23, 1919, which objection was sustained, and to this ruling the plaintiff in error excepted (pp. 159 to 164, inclusive, printed Record).

The evidence being closed, the plaintiff in error moved the court to rule as a matter of law, as set forth (page 164, printed Record).

To which motion and ruling the defendant in error objected, the objection was sustained, and the plaintiff in error excepted.

The defendant in error then moved the court to rule as a matter of law as set forth (pp. 165 to 166, printed Record).

To which motion and ruling the plaintiff in error objected; objection overruled and the plaintiff in error excepted.

Whereupon the court found upon the issue joined on the plea of not guilty, for the defendant in error, the fee of the real estate and the premises described in the declaration.

The plaintiff in error then moved the court in arrest of judgment, to set aside the finding of the court and for a new trial, which motion was in writing, duly filed, and states the grounds thereof as set forth (page 167, printed Record).

All of which several motions the court overruled, to which rulings the plaintiff in error excepted. The court then entered judgment, and the plaintiff in error, tendered its bill of exceptions, which were duly signed, sealed, and made a part of the record (pp. 110 and 111 and 155 and 168, inclusive, printed Record).

The plaintiff in error, noted an appeal to the Court of Appeals of the District of Columbia, which was duly allowed, and appeal bond was duly filed and approved on the first day of July, 1919.

The Court of Appeals of the District of Columbia by its judgment entered on the 9th day of April, 1920, affirmed the judgment of the Supreme Court of the District of Columbia, from which judgment of the Court of Appeals, a writ of error was allowed to this Honorable Court.

Statement of Facts.

These stipulations, exhibits, documents, memoranda, plats and statements show the following facts:

I.

Land in Dispute.

(*a*) The land in dispute is situated on the western side of the Potomac River and the river front of Alexandria, and is a part of a larger area of made land, containing about 46.57 acres. All this made land is permanently annexed to the soil of Virginia at Alexandria, at high-water mark, on the southwesterly side of the Potomac River as it existed prior to the making of said land, and was made by the filling in of the cove, now commonly known as "Battery Cove." The part of said made land in dispute lies within the southern boundary line of the ship-yard property of the plaintiff in error (Exhibit "A" and exhibit filed May 23, 1919, end of Record).

(*b*) The land in dispute and all the filled area in said cove, lies southwest of a straight line beginning at Jones' Point, at low-water mark, and extending from thence in a northerly direction to low-water mark at Point Lumley and between said line and the Virginia shore of the Potomac at Alexandria, at high-water mark, and lies also within the lines of a grant of the Crown of England, under the seal of the Colony of Virginia, in 1669, to Robert Howsing, for six thousand acres of land, which included the bays, creeks and inlets along said river within the line of said grant, to make said acreage, and included also Holmes' Island, now Alexander's Island, and Pase's Island, now Pearson's Island. The line of said patent or grant extended from a point on the southeasterly side of Alexander's Island, nearly opposite My Lord's Island, now Analostan Island, in a southwesterly line to a pokecory standing at the north point of Indian Cabin Creek, now known as Great Hunting Creek (paragraphs (&) and (*k*), pp. 67, 78 and 182, printed Record, and Exhibits 4, 9 and 16, end of Record).

(*c*) The filling in of said cove was done under two acts of Congress making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, approved June 25, 1910, 30th Statutes at Large, chapter 382, page 630; and February 27, 1911, 36th Statutes at Large, chapter 166, page 93, the first of which acts, contained this provision, "Improving Potomac River at Alexandria, Virginia, in accordance with the report submitted in House Document 1253, Sixtieth Congress, second session, $60,000.00." And the second, contained this provision: "Improving Potomac River at Alexandria, Virginia, completing improvements, $56,000.00."

In the course of the work of improving the Potomac River at Alexandria, by deepening the channel thereof, in accordance with the report submitted in House Document 1253, a riprap wall was constructed on the submerged soil constituting the bed of the Potomac River, extending from a point at or near a line drawn from Lee Street, on the south side of Franklin Street, when projected into the river, in a south-

easterly direction, to the end of Jones' Point. The material taken from the bed of the river, was deposited on the submerged land, behind and westward of the riprap wall and between the same and high-water mark on the Virginia side of the Potomac at Alexandria, and it became fast land, immediately contiguous to the fast land of Virginia, on the west bank of the Potomac. The work of constructing the riprap wall was begun September 6, 1910, and completed April 26, 1911, the said wall being built up to about five feet above mean low-water mark, forming a revetment against the swell of boats, wave action, and freshets. By December 17, 1910, the work on the wall had been so far completed that ordinary access to navigation had been cut off from so much of the front thereof as lies southward of the north end of said wall and contiguous to the premises described in the declaration. The work of filling in the area thus made was begun March 4, 1911, and completed December 29, 1912; that at the date of the commencement of the building of said riprap wall the average depth of water within the filled area was one and one-half feet at mean low water, and the mean range of the tide was about three feet.

On January 8, 1912, the United States caused a fence to be erected, inclosing the reclaimed area, together with signboards nailed to the posts thereof, giving notice that the said made land was Government property and that trespassers would be prosecuted.

On the night of January 8, or the morning of January 9, 1912, a portion of said fence, about two hundred feet in length, separating the reclaimed area from the upland owned by the plaintiff in error, above the water line, was destroyed by the plaintiff in error, who entered into possession of the same, and is still in possession thereof (pp. 4 to 7, inclusive, printed Record).

(*d*) So far as the record in this case discloses, the erection of said fence and the posting of the reclaimed area, constitutes the first assertion by either the State of Maryland, or by the United States, of claim to the fee of the land under the waters within the said cove, or that the same was within

the territorial boundaries or jurisdiction of either, from 1669 up to the date that said fence was first erected; or that the right of the Crown of England, under the seal of the Colony of Virginia, to make the Howsing grant of 1669 was ever contested by either the State of Maryland, or by the United States.

(*e*) That before the commencement of the work of building the retaining wall and the filling of said cove, bay, or inlet the Engineer Officer of the United States Government in charge of said work consulted with the plaintiff in error and other owners of land abutting on said cove, and obtained their consent to said work, and to the building of the necessary banks along the shore line on the Virginia side of the river, to retain the dredgings from the channel of the river, to the level of the proposed fill; both parties, however, reserving all their legal rights to the land to be made in the course of the improvement (pp. 151 and 152, printed Record).

(*f*) House Document No. 1253 and the survey and plat which were made a part of the act of Congress of June 25, 1919, show the purpose of the work was to improve the river and harbor at Alexandria, Virginia, and the reasons therefor. The original plan was to deposit the dredgings from the river upon the Maryland flats, so as to deflect the channel of the river toward the Alexandria water front. Why the change from this plan to that carried out by filling in of Battery Cove with the material taken from the river does not appear. The survey and plat shows a continuous black line, with stars across it at regular intervals, commencing at "A," the end of Jones' Point, and running from thence to "B," at the foot of Wolfe Street, near Point Lumley, and from thence parallel with the present river line at Alexandria to "D," the north line of the city limits at the present time, which is the bulkhead line in front of said city; and the line indicated by short black dashes, extending from Jones' Point, parallel to the bulkhead line and east of it, to Pendleton Street, where it diverges in an easterly direction to the northern city limits, projected into the river, is the pier head or wharf line of the Alexandria river front. The bulkhead line indicates the line in the river out to which solid piers or bulkheads may be built,

and the wharf line indicates the distance from the bulkhead line to which wharves or piers may be extended into the river east of the bulkhead line, by Virginia and her citizens, along the whole river front from Jones' Point to the northern city limits (pp. 173 to 182, inclusive, and Exhibit 4, end of Record).

(*g*) That all the filled area in Battery Cove between the retaining wall and the Virginia shore, at high-water mark, except a small part southeast of the old District line at Alexandria, lies west of a line drawn from Jones' Point, at low-water mark, to Point Lumley, at low-water mark, and between this line and high-water mark on the Virginia shore, and is within the boundary lines of the Howsing grant of 1669 (paragraph (*k*), p. 78, and pp. 173 to 182, inclusive, printed Record, and Exhibit 4, end of Record).

(*h*) There is no evidence in the record that the State of Maryland, the United States, or the Government of the District of Columbia, ever claimed or exercised territorial ownership, sovereignty or jurisdiction of the area within Battery Cove. The record does show, that the authorities of the State of Virginia and Alexandria City, did exercise jurisdiction within said area (p. 85, paragraphs 1 and 6, printed Record).

II.

Plats, Surveys and Accompanying Documents Offered in Evidence on Trial of the Issues in This Case.

A. By the Defendant in Error

Exhibit "A."—Survey and plat showing the land in dispute, and that it cuts out of the property of the plaintiff in error, approximately one-fourth of its area on the south, and to a material extent, its river front on the east.

Exhibit "B."—Survey and plat showing the retaining wall from Jones' Point to the ship-yard property of the plaintiff in error, the filled area in "Battery Cove," and its relation to the property in dispute; also the low-water line in the cove prior to the fill, but does not show the extreme end of Jones' Point, as is correctly shown by the survey and plat attached to House Document 1253, from which latter

survey and plat it appears that the retaining wall begins at the end of Jones' Point, and runs from thence in a northwesterly line to the ship-yard property (see Exhibit "4").

B. By the Plaintiff in Error.

The exhibits are placed according to their chronology, and not according to their consecutive numbering.

Exhibit "9."—Survey and plat of the Howsing Patent of 1669, for six thousand acres of land, situated, lying, and being upon the freshes of the Potomac River, on the west side thereof, showing the shore line of the Potomac River, Holmes' Island, now Alexander's Island, Pase's Island, later known as Pearson's Island, the gut, inlet, or bay lying north of Point West, and the bulges in the shoreline between the gut and Piper's Island, now Jones' Point, where subsequent plats locate Point West and Point Lumley. From this survey and plat it will appear that if a line is drawn from the southeast corner of Holmes' Island, now Alexander's Island, to Piper's Island, or the north point of Hunting Creek, it will make a southwesterly line, and will include all bays, inlets, and coves between these two points. It shows only two courses from "A" the beginning point, one a southeast course to the southeast corner of the Island and from thence a southwesterly course to the north point of Indian Cabin Creek. The several courses mentioned in the Grant, refer to the courses indicated by the compass, and not the meander lines of the river shore. This survey and plat was originally made by Theodore Bland, surveyor of Stafford County, Virginia, February 26, 1693, and shows that the successors in title to Howsing, were then in actual occupation of this patent.

Exhibit "16."—Survey and plat made by Joseph Berry, April, 1741, being a survey of the Howsing Patent, showing the same state of facts as above set forth with reference to Exhibit "9," and that the said patent was then in the actual occupation of the successors in title to Howsing.

Exhibit "1."—The original plan of Alexandria, made in 1748, shows Point Lumley, also called Middle Point, Point West, the cove between these two points, and that this cove extended in shoreward to the west line of Water Street, now

Lee Street, and that the cove, or gut, shown on Exhibits Nos. 9 and 16, extended in a southwesterly line to a point south of Queen Street on said plan, covering a number of blocks in the plan of the town, which subsequent exhibits shows was filled in prior to 1798.

Exhibit "14."—Survey and plat of Alexandria, made in 1798, showing its then river front, the location of the ship-yard of the plaintiff in error, Point West, Point Lumley, Jones' Point and the gut or inlet north of Point West, as shown on the Howsing Patent of 1669, and that the cove between Point West and Point Lumley, had been filled in out to a line even with both of said points, and that south of Point Lumley land had been made from the west side of Union Street to the south line of the location of said ship yard, and between Point Lumley and the ship yard's south line, east into the river the distance of about a block and a half.

Exhibit "2."—Survey and plat made in 1804 of the river front of Alexandria, showing the extension of the town east of its original shore line into the Potomac River between Point West and Point Lumley, and that the made land had been extended east into the river of Water Street, now Lee Street, a distance of two blocks or more, and that Union Street had been extended across the same, and showing also that between Point Lumley and Jones' Point the made land had been extended from the west line of Union Street into the river the distance of a block and a half, and that Union Street and Water Street, now Lee Street, had been extended practically from the north to the south limits of the city.

Exhibit "13."—Survey and plat made in 1838, by the Alexandria Canal Company, showing the boundary line between Alexandria, D. C., and Fairfax County at that time, and the cove north of Point West, as shown on the Howsing Patent of 1669. A line is drawn upon this plat in a northerly direction from Jones' Point to the northern city limits, to indicate the line in the river to which the city of Alexandria claims its corporate boundaries extend, under the various acts of the General Assembly of Virginia and its

charter, from the earliest history of the town to the present time, and that this line included Battery Cove and the other coves, inlets, or bays on the river front of Alexandria.

Exhibit "6."—Survey and plat made for the Alexandria Canal Company in 1838, showing the river front of Alexandria, the dividing line between the District of Columbia and Fairfax, Four Mile Run and its confluence with the Potomac River, Jones' Point, Alexander's Island and the bays and inlets on the river front between the southeast end of Alexander's Island and Jones' Point. It will appear from this map, if a line is drawn from the southeast end of Alexander's Island to Jones' Point in a southwesterly direction, it will include all the bays and inlets between those two points and will correspond with the east boundary line given in the Howsing Patent of 1669 (pp. 67, printed Record).

Exhibit "7."—Survey and plat of Alexandria, made in 1845, showing its river front at that date, from which it appears that the piers, made land, bulkheads, and other structures from Jones' Point to the north side of the canal, extend into the river Potomac for a block and a half beyond the lines of 1748, and that Water Street, now Lee Street, had been extended from the extreme northern to the extreme southern limits of the city at Hunting Creek, and that Union Street had been extended from Point West across the cove between Point West and Point Lumley and across the cove between Point Lumley and Jones' Point to a point south of the property of the plaintiff in error.

Exhibit "15."—Copy of Coast and Geodetic survey and plat, made in 1863, upon which a line has been drawn by S. Gordon, engineer of the Southern Railroad Company, from Jones' Point northward to the north line of the corporate limits at that date, to show the eastern boundary of its corporate limits in the Potomac River as claimed by Alexandria from its earliest history, and shows also, a line drawn from low-water mark at Jones' Point to low-water mark at Point Lumley, and that the retaining wall at Battery Cove lies between the last-mentioned line and the Virginia shore of the Potomac River.

Exhibit "8."—Survey and chart made by the Coast Survey of the United States, of the Potomac River from Indian

Head to Georgetown, in the year 1864, from which it will also appear, if a line is drawn from the southeast end of Alexander's Island to Jones' Point at Alexandria, in a southwesterly course, it will correspond to the line given in the Howsing Patent of 1669, and include within it all the bays, inlets, or coves between the two points named.

Exhibit "16."—Survey and plat of a patent issued in 1867, by Virginia, of ninety-seven acres of accretions off Alexander's Island.

Exhibit "11."—Plat showing the shipyard property of the plaintiff in error and adjoining property, the pierhead of defendant's property extending into the river, Battery Cove, and the line of Lee Street extended southward to Hunting Creek, and the line of Union Street extended into and across the cove known as Battery Cove and Jones' Point into Hunting Creek. This plat was made from plats of the City of Alexandria and from the actual dimensions of lots contained in conveyances recorded in said city by the parties named in the list attached thereto, and is of date 1886.

Exhibit "12."—Plat of Point Lumley and adjoining properties east of Union Street. By this plat, made from actual measurement of the lots shown thereon and of Potomac Strand, it appears that the east side of Strand is two hundred and fifty feet east of the west side of Union Street, and that Strand Street is 20 feet wide, and that Point Lumley is situated and extends into the river eastwardly from the east side of Potomac Strand. Other plats referred to will show that the Pioneer Mills were built on the extreme end of this point and that the structure extended beyond the point into the river (Exhibit plat No. 5).

Exhibit "5."—Plat filed with the stipulation, May 23, 1919, showing the property of the plaintiff in error, the separate lots into which it was divided and acquired by it, and the metes and bounds of each lot; also showing that this property and its subdivisions run eastwardly into the Potomac River, from the east side of Union Street, over three hundred feet, all of which is made land since 1748, as shown by the facts in the record. That the pierhead of

the property extends into the river beyond the line of the lots in the subdivision, and shows also, the various ownerships through whom title was derived.

Exhibit "3."—A composite plat made by S. Gordon, engineer of the Southern Railway Company, from the original plan of Alexandria, and Exhibit "B," filed by the defendant in error, showing the retaining wall from Jones' Point to the shipyard of the plaintiff in error, the bulkhead line from Jones' Point to Wolfe Street, near Point Lumley, and from thence to the northern city limits, and that the retaining wall, and the property in dispute, and the fill in Battery Cove, lie between the bulkhead line and the shore line of the Potomac in said cove, and upon this plat is indicated the original location of Point Lumley and Point West in 1748, and their relation to the shore or wharf line of Alexandria at this time.

Exhibit "4."—Plat made by the United States engineers in compliance with the rivers and harbors, Acts of March, 1907, November, 1907, and March, 1908, upon which is shown the bulkhead line as beginning at the extreme end of Jones' Point and extending from thence in a northerly direction to Wolfe Street, at a point near Point Lumley, and from thence in a straight line, in a northeasterly direction, to the north corporate limits of Alexandria. It also shows Battery Cove fill, the shipyard of the plaintiff in error, the cove, or gut north of Point West, the canal locks and the lines of the old pier of the canal company extending into the river, and that they are all included within and west of the bulkhead line. By reference to Exhibit "B," of defendant in error, it appears that the bulkhead line is fifty feet east of the retaining wall, and that the pierhead line is one hundred feet east of the bulkhead line.

Exhibit "5."—A composite plat by S. Gordon, engineer of the Southern Railway Company, made from the original plan of the town of Alexandria, and a copy of the plat, Exhibit "4," made by the United States engineers, upon which Gordon has indicated by a heavy line drawn from Jones' Point at low-water mark, to Point Lumley at low-water mark, that the retaining wall and all the filled area is west of and between that line and the Virginia shore in

Battery Cove, and shows also the relation of Point West, Point Lumley, and Jones' Point in 1748, to the present river line; also that the extent of made land east into the Potomac River between Point West and Point Lumley includes the entire river front between said points; also the extent of the made land south of Point Lumley, into the Potomac River, and from that point to the south line of the shipyard of the plaintiff in error (excluding, however, the disputed area shown on this plat). All of which made land as shown by the evidence was so made between 1748 and 1789, by filling in east of the original lines of the river front, as shown on this plat.

There was no plat or map of the territory of the District of Columbia, made since the recession of Alexandria City and County to Virginia in 1846, offered in evidence, showing that any part of Battery Cove or of the river front, or other coves, or bulkheads, piers or wharves, at Alexandria, are included within the boundaries of the District of Columbia.

III.

Explanation of Landmarks.

That Mussel Creek, in the John Matthews grant, is the same as Indian Cabin Creek, in the grant to Robert Howsing, now known as Great Hunting Creek, and so known for one hundred years; that North Point of Indian Cabin Creek in the Howsing grant, on plat No. 9, and Piper's Island on plat No. 16, are the same as Jones' Point, and so known for over one hundred years; that the headland shown on plat No. 16, as Hugh West's Hunting Creek warehouse, is the same designated on plat No. 1 as Point West; the ferry designated on plat No. 2, is the same as Point West; the Alexandria Fertilizer and Chemical Company, shown on plats Nos. 3, 4 and 5, is the same as Point West; that Hooe's wharf and Hamilton's wharf, on plat No. 2, is the same as Point Lumley on plat No. 1; that Point Lumley and Pioneer Mills on plats Nos. 3 and 5, and Pioneer Mills on plat No. 4, are the same as Point Lumley on plat No. 1; that "Keith's," on plat No. 6, is the property now owned by the plaintiff in error, the county wharf on plat No. 6, is the same as

Point West on plat No. 1 and other plats before mentioned; that the fish wharf on plat No. 7, is the same as Point West on plat No. 1 and other plats; and that Water Street, on plats 1, 2 and 7, in the plans of Alexandria, is the same as Lee Street on plats 3, 4, 5 and 11, the name of the street having been changed (paragraph (*g*), pp. 10 and 11, printed Record).

IV.

History of Alexandria River Front, Including Battery Cove.

(*a*) Exhibits Nos. "9" and "16," showing the shore lines of the river of the Howsing patent, indicate that there were two small coves, or inlets, in front of the original City of Alexandria. The town of Alexandria was first established in 1748, by an act of the General Assembly of Virginia, its location being at what was then known as Hunting Creek Warehouse, on the Potomac River. The plan of the town was surveyed and laid out in 1748. The records of Alexandria and Fairfax Counties, together with the plans of the town, show that when the plan of the town was made, there was a cove, a bay or inlet extending from Jones' Point to Point Lumley, its deepest shore line being on the west side of Water Street, now known as Lee Street. As early as 1785 the land upon which is located the present shipyard of the plaintiff in error, as well as other land lying north of the shipyard and south of Point Lumley, was made by filling in of said cove, from the west side of Union Street east into the river, to a point nearly even with the end of Point Lumley. The filling of said cove, including the present location of the shipyard of plaintiff in error, and north of it to Point Lumley, was done some time prior to 1789, as will appear from deed dated April 1, 1785, from William Alexander and William Gibbon Stuart, surviving executors of John Alexander, deceased, to John Harper, and by deed from William T. Alexander to John Harper, dated September 3, 1875, and that so much of Union Street, in Alexandria, as extends from Point Lumley to the south line of the shipyard, was filled and made land, about the same period, and opened as a street to the south line of the shipyard property (paragraphs (*c*), (*d*), (*e*), (*f*), pp. 8 to 10, inclusive, and

paragraph (*a*), pp. 92 to 94, inclusive, printed Record).

The plan of the town shows there was another cove, in the shore line of the river, between Point West and Point Lumley, the deepest shore line of said cove being on the west side of Water Street, now known as Lee Street. That from the shore line of 1748, between these two points and the present shore line, is altogether made land, by the filling of said cove, bay, or inlet. The records of Alexandria and Fairfax Counties show this fact, and that such land was made prior to 1789, by reference to deed from Dennis Ramsay to Isaac Little, of December 16, 1789, and to other deeds and conveyances recorded in said county and city (paragraph (*d*), pp. 8 and 9, printed Record; and Exhibit 1).

(*b*) It appears also, from the records of Alexandria and Fairfax Counties, that Jones Point was conveyed, by that name, by William Thornton Alexander and wife to Stephen Cook, December 27, 1794, Liber G, page 54, and was conveyed to the Manassas Gap Railroad, by sundry mesne conveyances, and is now held by the Southern Railway Company under claim of title in fee, excepting, however, three thousand square feet thereof, conveyed to the United States for the Jones' Point lighthouse, by deed dated April 3, 1855, Liber Q, No. 3, page 377 (paragraph (*c*), p. 9, printed Record).

(*c*) It appears from the same records that the trustees of the town of Alexandria leased to Robert T. Hooe and others, December 1, 1780, all that part of Point Lumley beginning on the south side of Duke Street, east of the corner of lot No. 77, pointing northeast, then owned by Thomas Fleming; thence south parallel to Union Street 121 feet, or thereabouts, to the ground leased by the trustees of Alexandria to said Fleming; thence east into the river; thence north with the river to Duke Street, and west to the beginning for a term of twenty-one years, from October 1, 1780. It further appears from deed dated January 17, 1794, Liber F, page 294, Alexandria records, that on March 29, 1774, the trustees of Alexandria leased to Thomas Fleming, for a term of sixty-three years, a part of the ground appropriated for the

use of the town upon Point Lumley, adjoining the ground owned by Thomas Fleming, being a part of lot 77, in the plan of the town, and to extend from his ground 25 feet north, and from thence east that breadth into the Potomac River; and that said leasehold was sold to Robert Townshend Hooe, the lots so leased being described as beginning at the north line of lot 77, 136 feet, 1 inch east of Union Street; thence north 25 feet and thence east into the Potomac River. It further appears that the Mayor and Commonalty of Alexandria and the executor of Thomas Fleming, deceased, conveyed to Robert T. Hooe the unexpired part of said lease, then forty-four years, and that on February 26, 1853, Liber O, No. 3, page 317, Alexandria records, the Common Council of Alexandria leased to William H. and George D. Fowle a lot of ground beginning at the intersection of the south side of Duke Street with the east side of Potomac Strand, and running thence east into the Potomac River, and from thence returning to the beginning point and running from thence with the east side of Strand 145 feet, 7 inches; thence east parallel to Duke Street, into the river, and north to connect with the first line, for a term of ninety-nine years, beginning February 26, 1853, upon condition that the lessees build a flouring mill upon said lot within one year, to cost not less than $50,000.00. That the Strand referred to in the said lease is 230 feet east of the west line of Union Street; that the Strand is 20 feet wide, and that Point Lumley lies east of the Strand. The mill was erected partly on Point Lumley and partly in the river, some time during the year 1853, and is known as the Pioneer Mill, and is indicated upon plat No. 12, also paragraph (*f*), pp. 9 and 10, printed Record.

(*d*) Plat No. 1 shows the original plan of Alexandria and the line of the Potomac River front in 1748; plats Nos. 2, 3, 4, 5, 6 and 7, show the plan of the City of Alexandria, as the city has been enlarged between 1748 and the present time, and the consequent changes in the line of the river front since the original plan of the town was laid out.

(*e*) That after the filling in of said coves, bays, or inlets, up to date of the cession of the County of Alexandria to the United States, the State of Virginia exercised jurisdiction

over the land so made as being within its territorial boundaries; levied and collected taxes thereon, and all conveyances relating to the same were recorded either in the City of Alexandria or in the County of Fairfax, Virginia, and from the date of the retrocession of Alexandria to the State of Virginia, in 1846, all said made ground has been treated as a part of the State of Virginia, and it has exercised jurisdiction over the same, levied and collected taxes thereon, and all conveyances relating to the same have been recorded in the City of Alexandria up to the present time (paragraph 11, printed Record).

It it clear that from 1748 up to 1789 all the cove, between Point Lumley and Point West was filled and made land, fast to the Virginia shore of the river, and that as early as 1785 it extended eastwardly into the river beyond the extreme end of both points, and that likewise a large portion of the cove, between Point Lumley and Jones' Point was filled in and made land, fast to the Virginia shore of the river, out to a line in the river nearly even with Point Lumley (Exhibits 1, 14, 2, 13, 7 and 5).

The acts of the General Assembly of Virginia of 1762, 1772, 1779, 1785, 1786 and 1798 show that the trustees of Alexandria laid off and sold lots in the marshes of both of said coves, inlets, or bays; made regulations as to the improvements of these marsh lots; provided for the building of landings and wharves into the river, and made regulations as to the arrival and departure of vessels at these landings and wharves, whereby Virginia claimed proprietary right and jurisdiction over these coves, and asserted the same were within her territorial boundaries and jurisdiction; as also, by the act of the General Assembly of Virginia, of 1782, extending Union Street from the northern to the southern limits of the town, across both of said coves, and by the act of 1785, extending the boundaries of the town from a point on Great Hunting Creek and running thence parallel to Fairfax Street to Four Mile Run or Creek, so as to intersect King Street (when extended) one mile west from the courthouse; thence eastwardly down the said creek or run to its confluence with the Potomac River;

thence southwardly down the said river to the mouth of Great Hunting Creek, and thence westwardly up the creek to the beginning. This act was passed soon after the compact between Virginia and Maryland of 1785 (paragraphs (*c*), pp. 96 to 98, inclusive, (*a*), pp. 69 to 71, inclusive, (*b*), pp. 71 and 72, (*c*), p. 72, (*d*), pp. 72 to 74, inclusive, (*e*), pp. 74 and 75, (*d*), 98 and 99, and (*e*), (*f*), (*g*), (*h*), 99 to 101, inclusive, printed Record).

Between the cession of Virginia of 1789 and the recession of 1846, Congress made no change in the corporate boundaries of the town of Alexandria; on the contrary Congress, by the act of 1801, preserved and secured to Alexandria all the rights held by her under the acts of incorporation of said town and city (Sec. 16, p. 21, printed Record).

After the recession the act of the General Assembly of Virginia of 1848, authorizing the Alexandria Canal Company to construct such wharves, piers, basins, and works on the Potomac River at or near its outlet locks as necessary for the accommodation of its trade, etc., and the acts of said Assembly of 1852, 1853, 1858, 1860, 1865 and 1871, amending the charter of Alexandria, definitely fix the corporate or territorial limits of the said city as extending into the river Potomac to a line drawn at a point 595 feet 9 inches north of Montgomery Street, to a point where the southern line of the city is extended into the river at Jones' Point (paragraphs (*m*), (*n*), (*o*), pp. 102 to 105, inclusive, and paragraphs (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), pp. 75 to 79, inclusive, printed Record).

The filling in and making of land within the coves before mentioned, between 1748 and 1789; the recording of conveyances relating to the same in the City of Alexandria and County of Fairfax, and the levying and collecting of taxes, both municipal and State, upon these lands so made, for over one hundred years, and the various proceedings under the Howsing grant of 1669, furnish abundant proof of the adverse and continuous claim of Virginia to the bays, coves, or inlets within the lines of the Howsing Patent, and within the lines of the corporate limits of Alexandria, and that all of said coves, bays, or inlets, including Battery Cove, are

within the territorial boundaries or jurisdiction of the State of Virginia (paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), pp. 7 to 11, inclusive, printed Record).

V.

Claim of Defendant in Error.

The facts in the record show, the defendant in error, claims the land in dispute and the entire area of made land in Battery Cove, is the property of the United States, and is within the territorial boundaries of the District of Columbia and the jurisdiction of said District and of its courts by virtue of the following grant and the cession of the State of Maryland:

(*a*) The Charter of Maryland, granted June 20, 1632, by Charles I, to Cecilius Calvert, Lord Baltimore, son and heir of George Calvert (paragraph (*a*), pp. 11 and 12, printed Record).

(*b*) The act of cession of Maryland of 1788, ceding ten miles square of the territory of said State for the site of the National Government and the act of said State, of 1791, confirming the cession of that portion of Maryland now included within the territorial boundaries of the District of Columbia (paragraphs (*c*) and (*j*), pp. 15 and 18, printed Record).

(*c*) The acceptance of said cession by the acts of Congress of 1790 and 1791 (paragraphs (*f*) and (*g*), p. 16, printed Record).

(*d*) The proclamations of the President of January 24, 1791, and March 30, 1791, and the act of Congress of 1801, extending jurisdiction over the ceded territory (paragraphs (*h*), (*i*) and (*k*), pp. 16 to 21, inclusive, printed Record).

VI.

Claims of the Plaintiff in Error.

The facts in the record show, the plaintiff in error claims that the land in dispute is its property, and that such disputed land and the filled area in Battery Cove, is within the

territorial boundaries and jurisdiction of Virginia and of the courts of said State and of the City of Alexandria:

(*a*) The several charters granted by James I, to the Colony of Virginia, dated respectively 1606, 1609, 1611, and 1612 (paragraphs (*b*), (*c*), (*d*), pp. 31 and 32, printed Record).

(*b*) The grant of the Crown under the seal of the Colony of Virginia to Robert Howsing, October 12, 1669, of six thousand acres of land, situated upon the freshes of the Potomac River, on the west side thereof, beginning above the dividing branches of the same, at a red oak standing by a small branch or run of water, near opposite to a small island, known as "My Lord's Island," extending down the Potomac River various courses, 3150 poles, making a southwesterly line to a pokecory standing at the north point of the creek, named by the English "Indian Cabin Creek," which creek divides this land and the tract of land surveyed for John Matthews, from the said pokecory northwest by west, by the said creek and the main branch, 520 poles; from thence north 940 poles, finally east 720 poles, to the red oak begun at, including several small creeks and inlets for the said quantity of land.

It appears from the record that in September, 1688, James II granted to Lord Culpeper the Northern Neck of Virginia; that prior to 1748 a dispute and controversy arose as to the limits and boundaries of the several letters patent granted by Charles II and James II unto the ancestors of Lord Fairfax, and that it had been adjudged by the then Majesty in Council that the letters patent do include all that tract or territory of land between the Potomac and Rappahannock rivers and a line marked from the headsprings of the river Potomac to the headsprings of the Rappahannock, commonly called the Conway, in which said tract or territory of land so described, many adventurers and planters had taken up great quantities of land, and had obtained grants and patents thereof from the Crown, under the seal of the Colony of Virginia, and that Lord Fairfax had consented before the King, in Council, that the several grants and patents made by the Crown of the lands included in the boundaries aforesaid should be confirmed to the several

grantees, their heirs and assigns. These grants or patents were confirmed by the act of the General Assembly of Virginia, of 1748, in which the foregoing facts are recited (paragraphs (*f*), (*h*), pp. 33 and 34, printed Record).

(*c*) The Constitution of Virginia of 1776, ceding and releasing and forever confirming to the Colony of Maryland the rights of property, jurisdiction and government and all other rights whatsoever at anytime theretofore claimed by Virginia; except, the free navigation of the rivers Potomac and Pocomoke, and the property of the Virginia shores or strands bordering on either of said rivers and all improvements which have been or shall be made thereon (paragraph (*i*), pp. 34 and 35, printed Record).

(*d*) The compact between the States of Virginia and Maryland of 1785, and particularly paragraph (6), wherein it is provided "that the river Potomac shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to all other persons in amity with said States, trading to or from Virginia or Maryland" and paragraph (7), wherein it is provided "that the citizens of each State, respectively, shall have property in the shores of the Potomac River adjoining their land, with all emoluments, advantages, etc., thereto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct, or injure navigation" (paragraphs (*j*), (*k*), (*l*), pp. 35 to 40, inclusive, printed Record).

(*e*) The Virginia acts of 1789, ceding territory to the United States for the seat of central government; the act of Congress of 1846, to retrocede the Virginia territory; the act of Virginia of 1846, accepting the recession; the results of the election of 1846 on recession; the proclamation of the President, September 7, 1846; the act of Virginia of 1847, extending jurisdiction over the receded territory, and the act of Virginia amendatory thereof (paragraphs (*m*), (*n*), (*o*), (*p*), (*p*-1), (*q*), (*r*), pp. 40 to 54, inclusive, printed Record).

(*f*) The act of Virginia of 1874, naming arbitrators to determine the true boundary line between Virginia and Maryland; the act of Maryland of the same year, contain-

ing the same provisions as that of Virginia; the act of Virginia of 1876; amending the act naming arbitrators, etc.; the act of Maryland, of the same year, for the same purpose, etc.; the opinion and award of the arbitrators, under and by virtue of said acts, in which is found the following: "The evidence is sufficient to show that Virginia, from the earliest period of her history, used the south bank of the Potomac as if the soil to low-water mark had been her own. She did not give up this by the Constitution of 1776, when she surrendered other claims within the chartered limits of Maryland, but, on the contrary, she expressly reserved the property of the Virginia shores or strands bordering on either of said rivers (Potomac and Pocomoke) and the improvements which have been or shall be made thereon."

By the compact of 1785 Maryland assented to this and declared that:

> "The citizens of each State, respectively, shall have full property in the shores of the Potomac adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of improving and carrying out wharves and other improvements."
>
> "The low-water mark on the Potomac, to which Virginia has a right in the soil, is to be measured by the same rule, viz.: from low-water mark at one head-land to low-water mark at another, without following indentations, bays, creeks, inlets, or affluent rivers."
>
> "Virginia is entitled not only to the full dominion over the soil to low-water mark on the south shores of the Potomac, but has a right to such use of the river beyond the line of low-water mark, as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of 1785."

The acceptance of said award by the acts of Virginia and Maryland, respectively, in 1878, and the consent of Congress to said agreement or award, and to each and every part an article thereof by the act of 1879.

(g) By prescription established, by lapse of time, from open and notorious claim, by Virginia and her citizens, of territorial ownership and jurisdiction, from 1669 to the present time, as shown by facts in the record, and recognized by the Acts of Congress, 1910, and 1911, for improving the Potomac River at Alexandria, Virginia; House Document 1253, Sixtieth Congress, made a part of the River and Harbors Bill, Paragraph (c) p. 8, pp. 173 to 182, inclusive; the United States Plat and Survey of the improvement, and the bulkhead and pierhead lines marked thereon. See Plat, Exhibit 4, end of record and Engineer Gordon's letter, p. 182, printed Record.

Assignment of Errors.

1. In holding, that the grant to Robert Howsing of October 21, 1669, by Sir William Berkeley, Governor of the Colony of Virginia, does not include within the said grant, the creeks, inlets, bays, coves, and indentations along the shore of the Potomac River to make up the quantity of land stated and described in the said grant, and in holding that the said grant together with the other facts in the record, does not establish by prescription territorial boundary, right, sovereignty, and jurisdiction, in the State of Virginia, so as to include Battery Cove and the parcel of land described in the declaration, within the territorial boundary, right, sovereignty and jurisdiction of said State, and the subject matter of this suit within the jurisdiction of its Courts.

2. In failing to hold, that the grant of Robert Howsing, October 21, 1669, by Sir William Berkeley, Governor of the Colony of Virginia, under the seal of said Colony, was a crown grant, prior and adverse to the Culpeper grant of 1788, and in connection with the other facts in the record, establishes by prescription, territorial boundary, right, sovereignty and jurisdiction in the State of Virginia, so as to include Battery Cove and the parcel of land described in the declaration, wtihin the territorial boundary, right, sovereignty, and jurisdiction of said State, and the subject matter of this suit within the jurisdiction of its Courts.

3. In holding, that the compact of March 28, 1785, between the States of Maryland and Virginia, does not relate to or effect the question of boundary between said States, but relates only to the establishment of a system of jurisdiction whereby the two states and the citizens thereof could amicably use and police the waters of the Chesapeake Bay, and the Potomac and Pocomoke Rivers; and in holding, that the subject matter of said compact was one of use and jurisdiction only, and not of sovereignty.

4. In failing to hold, that paragraphs 6 and 7 of the compact of March 28, 1~~875~~, between the States of Maryland and Virginia, did relate to and affect the question of boundary between said states, and that said paragraphs of said compact vested in the State of Virginia, for the use and benefit of her citizens, the right of access to and the use of the Potomac River, and that said paragraphs of said compact vested in the State of Virginia, for the use and benefit of her citizens, property in the shores of the Potomac River, together with all emoluments and advantages thereto belonging, and the proprietary or property right of making and carrying out wharves and other structures into the Potomac River, so as not to obstruct or injure the navigation of the river, as appurtenant to the highlands of Virginia, bordering on the Virginia shores of the Potomac River.

5. In holding, that the first section of the revised statutes of the United States affecting the District of Columbia, approved June 22, 1874, fixes the boundary of said District at high water mark on the Virginia side of the Potomac River, and in holding that, where that line is, de jure, is a political question, and is conclusive upon the Court in this case.

6. In holding, that the case of Maryland vs. West Virginia, reported 217 United States, p. 577, fixes the boundary line between Maryland and Virginia, at mean low water mark on the Virginia shore of the Potomac River.

7. In holding, that the United States, was not a party to the arbitration and award of 1878, between the States of Maryland and Virginia, and that the status of the United

States, with respect to the boundary between the District of Columbia and the State of Virginia, was not involved in that arbitration, and award.

8. In failing to hold, that the compact between the State of Maryland and the State of Virginia of 1785, was a boundary question, between said States, and that the provisions of paragraphs 6 and 7, of said compact, did involve the question of boundary between said States, according to the true interpretation and meaning of said compact; and in failing to hold, that the arbitration and award of 1878, between said States, did effect the status of the defendant in error, with respect to the boundary between the District of Columbia, and the State of Virginia; and in failing to hold, that by the Act of Congress of 1879, consenting to said arbitration and award, and each and every article thereof, the defendant in error, became a party to the said arbitration and award by consent, adoption and ratification as fully and completely, as if it had been a party thereto at the inception of the agreement for said arbitration and award.

9. In holding, that the State of Virginia, had no jurisdiction of the soil under the waters within the lines of the Howsing grant, or within Battery Cove, by prescription based upon said Howsing grant, and the other facts and circumstances in the record of this case, prior to the said Cove being filled by the United States Government in the improvement of the Potomac River at Alexandria, Virginia, under the acts of Congress of 1910 and 1911; and in holding, upon the record and the facts in this case, that the Howsing grant did not include the soil under the waters of the Potomac River, within the creeks, bays, coves, inlets and indentations along the Virginia shore of said river.

10. In failing to hold, upon the record and the facts in this case, that the State of Virginia acquired territorial right, dominion, sovereignty and jurisdiction by prescription, of the soil under the waters of the Potomac River within the creeks, bays, coves, inlets, and indentations along the Virginia shore of said river, within the lines of the Howsing grant, including the soil under the waters in said

Battery Cove, and including the parcel of land in controversy; and as well, by virtue of the compact between Maryland and Virginia of 1785, and of the arbitration and award between said States of 1878, and of the consent thereto by Congress in its act of 1879.

11. In holding, that the rights and privileges granted to the State of Virginia by the State of Maryland by virtue of paragraphs 6 and 7 of the compact of 1785, did not vest in Virginia, for the use and benefit of her citizens the right of access to the Potomac River, in front of the highlands bordering thereon; and did not vest in said State by virtue of the privilege of extending wharves and other structures beyond the line of low-water mark into the Potomac River, so as not to interfere with the navigation of said river, property rights or rights appurtenant to the highland for the use and benefit of her citizens; and in failing to hold, that the right secured to the State of Virginia by said compact to build wharves and other structures into the Potomac River so as not to interfere with the navigation thereof, constituted a proprietary or property right in the soil for such uses and purposes, for the use and benefit of the citizens of the State of Virginia.

12. In failing to hold, that the rights, property, privileges, and emoluments, secured to Virginia by virtue of Paragraphs 6 and 7 of the compact between Maryland and Virginia of 1785, for the use and benefit of her citizens, and of other facts in the record, were incorporated in and became a part of the territorial right, sovereignty, dominion and jurisdiction of said State, for the uses and purposes therein set forth.

13. In failing to hold, that by virtue of the arbitration and award of 1878, between the States of Maryland and Virginia, and of the consent thereto by Congress, that the low-water mark on the Potomac to which Virginia has a right and in the soil, is to be measured from low-water mark at one headland to low-water mark at another, without following indentations, bays, creeks, inlets or affluent rivers, and, that said boundary line so fixed, was the boundary line between the States of Maryland and Virginia, as of

1785, agreeably to the compact between said States of March 28, 1785; and, that such line is the present line of boundary between the District of Columbia, and the State of Virginia, and includes within the territorial boundary, sovereignty, and jurisdiction of Virginia, and the jurisdiction of its Courts, the parcel of land in controversy in this suit.

14. In holding, that the parcel of land in the declaration mentioned, is within the territorial boundary, sovereignty, and jurisdiction of the District of Columbia, and within the jurisdiction of the Supreme Court of the District of Columbia, and in refusing to hold, that the said parcel of land is within the territorial boundaries, sovereignty, and jurisdiction of the State of Virginia, and within the jurisdiction of the Courts of said State.

15. In failing to hold that the land made in Battery Cove by the United States Government in the course of the improvement of the Potomac River at Alexandria, Virginia, under the acts of Congress of 1910 and 1911, lies between a line drawn from Jones' Point, at low-water mark, to Point Lumley, at low-water mark, and includes the parcel of land in controversy in this suit, and is within the territorial boundaries, sovereignty, dominion and jurisdiction of the State of Virginia, and is within the jurisdiction of the courts of said State.

16. In holding that the defendant in error is entitled to recover of the plaintiff in error the fee of the parcel of land described in the declaration, and all rights, and appurtenances thereto belonging.

17. In affirming the judgment of the Supreme Court of the District of Columbia, see Assignment of Errors, pages 205 to 209, inclusive, printed Record.

Questions Involved.

The Assignment of Errors present the question of the jurisdiction of the trial court, and suggest for the consideration of this court the following propositions:

1. The jurisdiction of the trial court, and the title to the land in dispute.

2. The true boundary line between Maryland and Virginia, prior to and at the time of the cessions of territory for the seat of the Federal Government, by the respective states; and the present boundary line between the District of Columbia and Alexandria, Virginia, and the construction and legal effect of the Act of Congress of June 22, 1874, upon the question of the last mentioned boundary line.

3. The prescriptive right of the State of Virginia to proprietary and territorial right, sovereignty and jurisdiction of the land in dispute.

4. The compact of 1785, between Maryland and Virginia, and particularly paragraphs six and seven, and their construction and legal effect upon the territorial right, sovereignty and jurisdiction of Virginia, of the land in dispute; and upon the question of the boundary between said states; and particularly upon the question of the boundary between the District of Columbia and Alexandria, Virginia.

5. The Acts of Cession of Maryland of 1788-1791, and of Virginia of 1789, of territory for the seat of the Federal Government, and the construction and legal effect of the Act of Congress of 1846 receding the Virginia territory upon the question of the boundary line between the District of Columbia and Alexandria, Virginia.

6. The arbitration and award of 1878 between Maryland and Virginia and the construction and legal effect of the Act of Congress of 1879, consenting thereto, upon the question of the boundary line between the District of Columbia, and Alexandria, Virginia.

ARGUMENT.

FIRST

The Jurisdiction of the Trial Court, and the Title to the Land in Dispute.

The plea to the jurisdiction sets up the defense that the land in controversy is within the territorial boundaries and jurisdiction of the City of Alexandria and State of Vir-

ginia, and, therefore, the subject matter of this suit is wholly within the jurisdiction of the courts of said city and State, and not within the territorial boundaries and jurisdiction of the District of Columbia and of its courts.

The trial court erred in overruling the plea to the jurisdiction and in sustaining its jurisdiction, because the situs of the land in dispute is Alexandria City, Virginia; and the Court of Appeals of the District of Columbia erred in affirming the judgment of the trial court for the reasons hereinafter set forth.

All matters of fact offered in evidence by both parties on the trial of the plea to the jurisdiction, were also offered in evidence on the trial of the general issue, including the matters of fact set forth in the stipulation of May 23, 1919; therefore, the whole record of the trial of both issues will be considered by this court. The question at issue in this case is one of title to real estate, and if at any stage of the proceedings it is made to appear that the trial court had not jurisdiction of the subject matter in dispute, because its situs is not in the District of Columbia, then this suit will be dismissed, and the plaintiff left to pursue its remedy, if any, in the proper forum, which is the forum of the situs of the land in dispute.

The objection that a court has no lawful power to act by reason of lack of jurisdiction of the subject matter cannot be waived. It is fatal to the proceedings at any time and may be raised at any stage of the proceedings.

Objection may be made to the jurisdiction for the first time in the Appellate Court where a want of jurisdiction appears on the face of the proceedings, and it is the duty of the Court of Appeals, on its own motion, to correct exercise of jurisdiction on the part of the lower court.

Chapman *vs.* Maitland, 22, W. Va., 329.
Collins *vs.* Sutton, 94 Va., 127.
Morris *vs.* Gilmer, 29 U. S., 315.
Poindexter *vs.* Burwell, 82 W. Va., 507
Beckley *vs.* Palmer, 11 Grattan, 625.
Yates *vs.* Chandler, 47 W. Va., 376.

Jurisdiction depends upon the fact whether the land in dispute is in the District of Columbia, or in the State of Virginia. That fact must be settled by the facts in the record and the law of the instant case.

The United States has come into a court of law by an action of ejectment to recover the parcel of land to which it claims title, and the burden is upon it to show both jurisdiction and ownership, if both of these facts are traversed by the pleadings, which is the case here. In this, the United States stands in no better position than a private suitor.

It is true, as contended by counsel for defendant in error, in the Court of Appeals, that the court takes judicial notice of the boundaries of the territory within which it exercises its jurisdiction, but this is merely a rule of evidence that excuses the United States from proving the limits of that jurisdiction, unless that fact is traversed by the pleadings.

But when the territorial limits of the jurisdiction of the court are traversed by a plea to the jurisdiction, and the United States joins issue on that plea, the rule of judicial notice ceases to apply, and the defendant in error is put to proof of the fact. This is fundamental, and hardly needs citation of authority to support it. Chase *vs.* Wetzler, 225 U. S., pp. 79-89. Roberts *vs.* Lewis, 144 U. S., pp. 653-658. Law Ed. Vol. 36, p. 579.

The same rule applies as to Section One of the Revised Statutes of the United States, approved June 22, 1874, defining the boundaries of the District of Columbia. This is the only act upon that subject cited on behalf of the defendant in error, in which Congress has made any special definition of the territorial boundaries of the District of Columbia.

This act is not conclusive of the boundaries of the District, it is but a mere assertion of the fact, and unaccompanied by facts showing that such is the boundary of the District of Columbia, is not conclusive.

The claim of the plaintiff in error of jurisdiction in Virginia and its courts, and of title to the land in dispute, is founded on the charters of James I to Virginia of 1606,

1609, 1611 and 1662; the grant of the crown under the seal of the Colony of Virginia, in 1669, and the prescriptive right in Virginia, arising therefrom in connection with other facts in the record, including the compact of 1785, the arbitration and award of 1879, between Maryland and Virginia, and the Act of Congress of 1879, consenting to the latter, by virtue whereof the boundary line between the District of Columbia and Alexandria, Virginia, was established on a line beginning at Jones' Point, at low-water mark, and running from thence in a direct line to Point Lumley, at low-water mark. This places Battery Cove, the filled area thereof, and the land in dispute, between said line and the Virginia shore line in said Cove, at high-water mark, as it existed before the Cove was filled in and made fast land to the Virginia shore of the Potomac River.

The claim of the defendant in error is founded upon the charter of Charles I to Cecil Calvert of 1632, and the cession by Maryland of territory for the seat of the Federal Government, by virtue whereof, it is insisted by the defendant in error that the boundary line between the District of Columbia and Alexandria, is high-water mark on the Virginia shore of the Potomac River, as fixed by said grant in 1632.

If the land in dispute is within the territorial boundaries and jurisdiction of Virginia, then the title to this land is in the plaintiff in error, who deraigns title from Howsing and his successors in title, as shown by the record (pp. 112 to 150, inclusive, printed Record).

If the land in dispute is within the territorial boundaries and jurisdiction of the District of Columbia, then the title to this land is in the defendant in error, by virtue of the Calvert grant and the cession of Maryland (pp. 12 to 21, inclusive, printed Record).

It will be observed in the further discussion of the case, that the plaintiff in error does not claim jurisdiction in Virginia and its courts, under or by virtue of the grant of James II to Lord Culpeper, in 1688, of the territory known as the Northern Neck of Virginia, but bases its claim to jurisdiction in Virginia and her courts, upon the charters

of James I to the Colony of Virginia, and the Howsing grant made in 1669 by the Crown of England, through its representative, the Governor of the Colony of Virginia, which grant was made nineteen years prior to the Culpeper grant; as also by prescription and compact.

The question here is not one of jurisdiction only, but also a question of territorial ownership and dominion of the land in dispute, and upon the establishment of both territorial ownership and dominion, in law and in fact, the jurisdiction of the courts of the District of Columbia depends, for without this there is no such jurisdiction.

That the report and award of the arbitrators, made in 1878, determining the true boundary line between Maryland and Virginia, and all other facts offered in evidence on the issues tried in this case, tending to show the absence of the territorial jurisdiction of the trial court, excluded by said court, were admissible as evidence on behalf of the plaintiff in error, for the following reasons:

(*a*) They were relevant to the issue raised by the defendant's plea to the jurisdiction.

(*b*) The United States was a party plaintiff to the action, and the Act of Congress confirming and consenting to the agreement, decision and award of arbitration, is an admission against interest.

(*c*) The arbitration and award is a recital in a public Act of Congress.

(*d*) The report, arbitration and award, were admitted by this court in the case of Maryland *vs.* West Virginia, and this notwithstanding the fact West Virginia was not a party to said agreement for arbitration.

(*e*) The Act of Congress, approving and consenting to the agreement, arbitration and award is not only a ratification of the award, but of the deductions and conclusions of the arbitrators upon which the award was based.

Declarations as to the location of a line, which were admissions against the interest of the party making them, are admissible in evidence, not only against the declarant, but against persons subsequently deriving title through or under such declarant. Gillespie *vs.* Davis, Virginia Appeals, Vol.

9, No. 7, page 445. Duley *vs.* Bains, 86 Virginia, 644-648.

Any recitals of public acts are evidence of the facts cited. Branston *vs.* Worth, 17 Wallace, 32-34.

All the facts offered in evidence by the plaintiff in error constituted links in the chain of its claim of title and jurisdiction in Virginia, and were germane and material to the defendant's case and were in law admissible.

Evidence is admissible that bears directly upon the issue, or tends to prove the issue, or constitutes a link in the chain of proof, although alone it might not justify a verdict in accordance with it.

Greever *vs.* Bank, 99 Va., 547.

Alexandria R. R. *vs.* Herndon, 87 Va., 193.

To admit all the evidence offered by the defendant in error, upon the issues being tried by the court, and to reject all the evidence offered by the plaintiff in error, on the trial of said issues, left no issue of fact to be determined, and hence it was error, because all facts material on either side were admissible on the trial of said issues.

All evidence forming a link in the chain and tending to prove the issue should be admitted.

Hanriot *vs.* Sherwood, 82 Va., page 1.

Evidence which tends to support or has direct effect upon any issue is admissible.

Wade *vs.* Leroy, 20th Howard, U. S., 34.

If the evidence offered conduces in any reasonable degree to establish the fact in controversy it should be admitted.

Republic Fire Insurance Co. *vs.* Wiede, 14th Wallace, U. S., 375.

It is not necessary that evidence should bear directly on the point in issue. If it constitutes a link in the chain of proof or tends to make the question at issue in the particular case more or less probable, it is as a general rule, admissible.

Grubb *vs.* Buford, 98 Va., 553.

The facts in the record show beyond dispute that the defendant and its predecessors in title and possession, had held title and possession under the crown grant to Robert Howsing, from the date of said grant, in 1669, until 1912, when the plaintiff undertook to oust the defendant, and the defendant re-entered and resumed its possession of the land in controversy.

Possession of real property, once proved to exist, is presumed to continue.

Lazarus *vs.* Phelps, 156 U. S., 202.

The possession of land raises the presumption of ownership, in the absence of anything to show the contrary. By the rule of law, possession of real property will be presumed to accompany its ownership until the contrary is proved.

Gonzales *vs.* Rose, 120 U. S., 605.

The compact of 1785 and the opinion and report of the arbitrators of 1878, as before stated, were received in evidence by this court, in the case of Maryland *vs.* West Va., 217 U. S., 1-517, and the opinion of the arbitrators, incorporated in and made a part of the opinion of the court. In that case, this court recognized that the arbitration and award established the boundary line between Virginia and Maryland, to be *the true boundary line* between said states, agreeably to the compact of 1785.

In the case of Rhode Island *vs.* Massachusetts, 14th Peters, 210, this court held: "In a case where two sovereign states are contesting a question of boundary, the most liberal principles of practice and pleading ought, unquestionably, to be adopted, in order to enable both parties to present their claims in full strength." It seems that this principle ought to apply in this case; as the duty devolved upon the court to determine the boundary line between Virginia and the District of Columbia, it should have had before it every fact that would throw light upon the subject matter of this suit, that it might arrive at a correct and just conclusion.

In Wharton *vs.* Wise, 153 U. S., pages 155, 172-173, this court said:

> "The States of Maryland and Virginia, not only consented to the appointment of the arbitrators upon the conditions mentioned, but their award was approved by both states and by an Act of Congress. That approval covered all the conditions and stipulations upon which the award was made, and renders the compact of 1785, the rights and privileges of which were to remain and be enjoyed by the States and the citizens thereof forever, thus consented to by Congress, free from constitutional objections, if any, that were valid, that had previously existed. The act of Congress of March 3, 1879, chap. 196, 20 Stat., 481-483, recited, 'that arbitrators, duly appointed on the part of the States of Maryland and Virginia, for the purpose of ascertaining and fixing the boundary between them, did proceed to examine into and ascertain the *true line of said boundary*, and had made their award which was set forth and that that award had been ratified and confirmed by the legislatures of those States respectively, and then enacted, that the consent of Congress was given to the agreement and award and to each and every part and article thereof.' "

The plaintiff in error, does not, as contended by the defendant in error in the Court of Appeals, and as seems from its opinion, to have been the impression of that court, question the right of Congress by virtue of its powers under the Commerce clause of the Constitution, in the improvement of the navigation of the Potomac River at Alexandria, to construct and maintain the revetment or retaining wall across Battery Cove, or to fill in the area between the same and high water mark on the Virginia side of the Potomac. The law on that subject is too well settled for controversy. The plaintiff in error, does insist, however, that if the proprietary and territorial right, sovereignty and jurisdiction of Battery Cove was in the State of Virginia, prior to and at the time of said improvement, that the title of the plaintiff to the fee of the land in dispute was not divested, and that no change was wrought by said improvement in the

status quo; nor was the proprietary and territorial right, sovereignty and jurisdiction by such improvement, transferred from the State of Virginia to the District of Columbia, so as to include the filled area within the territory and jurisdiction of said District. Subject to the paramount right of navigation, the status quo remained unchanged.

Second.

The true boundary line between Maryland and Virginia, prior to, and at the time of the Cessions of territory for the seat of the Federal Government, by the respective states; and the present boundary line between the District of Columbia, and Alexandria, Virginia, and the construction and legal effect of the Act of Congress of June 22, 1874, upon the question of the last mentioned boundary line.

The courts of the District of Columbia, have held in several cases, that the boundary line between the District of Columbia and Virginia, is high mark on the Virginia side of the Potomac River as defined by the boundaries of the Calvert Grant of 1632. These cases are predicated upon the theory, that this court, in the case of Morris *vs.* United States, 174 U. S. p. 196, etc., decided, the Calvert line to be true boundary line between the District of Columbia and Virginia, Evans *vs.* United States, 31 D. C. Appeals, 544.

In the case of Morris *vs.* The United States, reported 174 U. S. 196, this Court judicially determined, that the grant by Charles I to Cecilius Calvert, Lord Baltimore, in 1632, included the Potomac River and the islands therein to high-water mark on the southern, or Virginia, shore.

Id. pages 222, 223, 224.

The court in delivering its opinion said:

> "The first question for our determination arises out of the claims of the heirs of James M. Marshall and the heirs of John Marshall, to the ownership of the entire bed of the Potomac River, from shore to shore, including therein the reclaimed lands."
>
> "Their claims are based upon two distinct lines or sources of title, inconsistent with each other; one originating in the charter granted by Charles 1st,

King of England, on June 20, 1632, to Cecilius Calvert, second Baron of Baltimore and the first Lord Proprietary of the Province of Maryland; the other, in the charter granted by James II, King of England, on September 27, 1688, to Thomas, Lord Culpeper."

Idem., 225:

"We agree with the conclusion of the court below that, upon all the evidence the charter granted to Lord Baltimore, by Charles I, in 1632, of the territory known as the Province of Maryland, embraced the Potomac River and the soil under it, and the islands therein, to high-water mark on the southern, or Virginia, shore; that the territory and title thus granted to Lord Baltimore, his heirs and assigns, were never divested by any valid proceedings prior to the Revolution; nor was such grant affected by the subsequent grant to Lord Culpeper."

It is equally true, that this Court in Morris *vs.* United States, did not decide the true boundary line between Virginia and the District of Columbia, to be high-water mark on the Virginia side of the Potomac. On the contrary, the court clearly disavows any intention of passing upon that question.

Idem., 223:

"We do not think it necessary to enter at length or minutely into the history of the long dispute between Virginia and Maryland, in respect to the boundary line; it is sufficient for our present purpose to say that the grant to Lord Baltimore, in unmistakable terms, included the river Potomac and the premises in question in this suit, and declared that thereafter the Province of Maryland and its freeholders and inhabitants should not be held or reputed a member or part of the land of Virginia, from which we do separate both the said Province and the inhabitants thereof."

"Finally, the controversy as to the true boundary line still continuing, in 1874, the legislatures of the two States agreed in the selection of arbitrators, by whose award, dated January 16, A. D. 1877, the jurisdictional line and boundary were declared to be low-water mark on the Virginia shore. This award was accepted by the two States and, by an Act approved March 3, 1879, chapter C. 196; 30th Stat., Congress gave its consent to the agreement and award; but provided that nothing therein contained should be construed to impair or in any manner affect any right of jurisdiction of the United States, in and over the islands and waters which formed the subject of the said agreement and award."

"It was a mutual feature of the legislature by which this conclusion was reached, that the landholders on either side of the line of boundary between the said States, as the same might be ascertained and determined by the said award, should in no manner be disturbed thereby in their title to and possession of their lands, as they should be at the date of said award, but should in any case hold and possess the same as if their said titles and possession had been derived under the laws of the State in which by the fixing of said line, by the terms of said award, they should be ascertained to be." (Act of Virginia, February 10, 1876, Chap. 48; Act of Maryland, April 3, 1876, Chap. 198.)

"Whether the result of this arbitration and award is to be regarded as establishing what the true boundary always was, and that therefore, the grant to Thomas, Lord Culpeper, never of right included the Potomac River, or as establishing a compromise line, effective only from the date of the award, we need not determine."

The claim of the plaintiff in error, in this case, not being founded on the Culpeper grant, is distinguished from the case of Morris *vs.* United States, both in the facts relied

on and in the law of the case, and this distinction is apparent from the opinion of this court in that case. 174 U. S., p. 225, in which this court said:

> "We agree with the conclusion of the court below that upon all the evidence, the charter granted to Lord Baltimore by Charles I in 1632, of the territory known as the Province of Maryland, embraced the Potomac River, and the soil under it and the islands therein, to high-water mark on the southern or Virginia shore: that the territory and title thus granted to Lord Baltimore, his heirs and assigns, were never divested by any valid proceedings, prior to the Revolution; nor was such grant affected by the subsequent grant to Lord Culpeper.
>
> "The record discloses no evidence that at any time, any substantial claim was ever made by Lord Fairfax, heir at law of Lord Culpeper, or by his grantees, to property rights in the Potomac River or the soil thereunder, nor does it appear that Virginia ever exercised the power to grant ownership in the islands or soil under the river, to private persons."

This statement is significant when considered in the light of the facts in this case, where it appears beyond question of doubt that the record is full of facts, the absence of which in the Morris case, called forth this expression of the court in its opinion. The record here shows that Virginia, under the authority of the Crown and under its colonial seal, granted the patent of six thousand acres on the Virginia side of the Potomac River, and in so doing made substantial claim to the soil under the waters of said river and to Holmes and Pases Islands, and the creeks and inlets within the lines of said patent, which claim of territorial right in Virginia to make said grant, remained uncontested for two hundred and forty-three years, or until the institution of this suit.

The claim of the Marshalls, in the Morris case was based wholly on the Culpeper grant of 1688. There was no evi-

dence in that case of any substantial claim by Lord Fairfax, or by his grantees, to property rights in the Potomac River, or the soil thereunder; nor was there any evidence in that case that Virginia ever exercised the power to grant ownership in the islands or soil under the river to private persons. In this case the Howsing grant of 1669, and its history shown by the record here, shows beyond question that Virginia claimed the right and power to make that grant, and did exercise the power to grant ownership to Howsing in the islands and soil under the Potomac River on the Virginia side thereof, and has for two hundred and forty-three years, and up to the time of the institution of this suit consistently and continuously claimed and exercised territorial dominion and jurisdiction over the same; all of which will appear in the further consideration of this case.

While it is true it has been judiciously determined that the boundaries of the grant by Charles I to Cecelius Calvert, Lord Baltimore, extended to high-water mark on the Virginia side of the Potomac River, yet it does not necessarily follow that this line of boundary remained the same, for it may, or any part of it could, be changed by compact between the two States, or by prescription.

The true boundary line between Maryland and Virginia, in 1785, and for a long time prior thereto, on the Virginia side of the Potomac River, was a uniform line at low-water mark from one headland to low-water mark at another, without following indentations, bays, creeks, inlets, or affluent rivers; and to this line Virginia had become entitled as early as 1785, by prescriptive right, and it was fixed and established by the compact of March 28, 1785, between the States of Maryland and Virginia, all of which appears from the report and award of the arbitrators selected under agreement by Maryland and Virginia, to determine the *true* boundary line between said States, and the subsequent acceptance thereof by the Acts of Assembly of both States, and the consent thereto by Congress of the United States.

The claims of Maryland and Virginia, respectively, as to territorial ownership and jurisdiction over the Potomac River, and the possession and ownership of the soil under the waters thereof, are based upon inconsistent charters or

grants made by the sovereigns of Great Britain; the claim of Maryland being founded upon the charter of June 20, 1632, by Charles I to Cecelius Calvert, Lord Baltimore, of the territory of Maryland (paragraphs "*a*" pp. 11 and 12, printed Record).

The claim of Virginia being based upon the charters or grants of James I, of 1606, 1609, and 1611-1612 (paragraphs (*b*), (*c*), (*d*), (*f*), pp. 31 to 33, inclusive, printed Record), and by prescription.

The several grants by James I to Virginia do not appear to have been in evidence, or even considered, by this court, in Morris *vs.* United States. Out of these conflicting charters or grants there arose a long controversy between Maryland and Virginia; on the one hand, Maryland claiming, by virtue of the charter of Charles I to Lord Baltimore, the whole of the Potomac River to high-water mark on the Virginia side thereof; and on the other hand, Virginia claiming, by virtue of the charters of James I and by prescription, to high-water on the Maryland side of the Potomac River, the State of Virginia insisting that the boundaries of the territory under the grant by Charles I to Lord Baltimore extended only to high-water mark on the Maryland side of the Potomac River (paragraphs (*b*), (*c*), (*d*), pp. 31 and 32, printed Record). During the one hundred and fifty years or more this controversy continued, Virginia always asserted territorial jurisdiction, ownership, and possession of the shores or strands on the Virginia side of the Potomac River, which is evidenced by the grant of land to include the soil under the waters on the Virginia side of the river, to Robert Howsing, in 1669, which grant was prior to the grant of James I, in 1688, to Lord Culpeper, (paragraphs (*e*), (*f*), (*g*), pp. 32 and 33, printed Record).

The Constitution of Virginia of 1776 (paragraph (*i*) pp. 34 and 35, printed Record), contains the following provision:

> "The territories contained within the charters erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released and forever confirmed to the people of those

> Colonies, respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pocomoke, with the property of the Virginia shores or strands bordering on either of the said rivers and all improvements which have been or shall be made thereon."

In Maryland *vs.* West Virginia, 217 U. S. page 1, and on page 45 of the report, this court, in delivering its opinions said: "As to the contention made by West Virginia in her cross-bill, that she is entitled to the Potomac River to the north bank thereof, we think that claim is disposed of by the case of Morris *vs.* United States."

The Court, after citing the language of Judge Shiras in that case, as to the conflicting rights on the Potomac River, between the grant to Lord Culpeper by James II and the grant to Lord Baltimore by Charles I, then, on page 46, concludes its opinion on the question raised by the cross-bill, in the following words: "We think this decision disposes of and denies this claim of the State of West Virginia in her cross-bill." In the same case, again reported in 217 U. S., 577-581, when the decree was prepared and submitted to the Court, in accordance with its decision already referred to, the attention of the court was directed for the first time to the arbitration and award between Maryland and Virginia. This court upon this last hearing after quoting an extract from the report of the arbitrators before mentioned, in summoning up the case, said:

> "The compact of 1785, (see Code of Virginia v. 1, title 3, chap. 3, sec. 13, page 16) is set up in this case, and its binding force is preserved in the draft of decrees submitted by counsel for both States. We agree with the arbitrators in the opinion above expressed, that the privileges therein reserved respectively to the citizens of the two States on the shores of the Potomac are inconsistent with the claim that the Maryland boundary on the south side of the

> Potomac shall extend to high-water mark. There is no evidence that Maryland has claimed any right to make grants on that side of the river, and the privilege is reserved to the citizens of the respective States in the compact of 1785, and its subsequent ratification indicated the intention of each State to maintain riparian rights and privileges to its citizens on their own side of the river."

This conclusion gives to Maryland a *uniform* southern boundary along Virginia and West Virginia, at low-water mark on the south bank of the Potomac River, to the intersection of the north and south lines between Maryland and West Virginia established by decree in this case. This conclusion is also consistent with the previous exercise of political jurisdiction by the States respectively.

The act of Congress of 1874, defining the political boundaries of the District of Columbia, we submit does not alter the boundary line between Virginia and the District of Columbia, as set forth in the arbitration and award of 1878, but we submit on the contrary, according to the true interpretation of the act, it serves only to confirm the contention of the plaintiff in error here.

Although the Act of 1874, is a political declaration of the boundaries of the District of Columbia, yet when the United States comes into a Court of Law, and sues to recover the fee of a parcel of land claimed by it to be within the boundaries of the District, and that fact is put in issue by a plea to the jurisdiction, then the United States undertakes and is bound to establish that fact, and the case must be tried on the law and the facts of the instant case.

The Counsel for the defendant in error, in the Court of Appeals, laid much stress upon the Act of Congress of June 22nd, 1874, as defining the boundaries of the District of Columbia, and insisted that this Act fixes the southern boundary of the District, at high-water mark on the Virginia shore of the river Potomac; and to give emphasis to his contention, italicized these words of the Act: "including the river Potomac in its course through the District," which occurs in the last sentence of the Section. We submit, however, that neither the language of the whole Section, or

the words italicized, justify any such construction and hold, that the Section itself, and the authorities interpreting the terms employed, convey an entirely different meaning, a meaning wholly consistent with the contention of the plaintiff in error as to the legal effect of the Howsing grant; the compact of 1785; the arbitration of 1878; the Act of Congress of 1879 consenting thereto, and of the general rule of law relating to title and boundaries established by prescription as between sovereignties.

Take the full text of the Section which is as follows: "The District of Columbia is that portion of the territory of the United States ceded by the State of Maryland for the permanent seat of government to the United States, including the river Potomac in its course through the District, and the islands therein."

It will be noticed that the terms of this Section do not include the river Potomac to high-water mark on the Virginia shore as the southern boundary of the District, but distinctly fix the course of the river as the boundary of the District. This Section must be construed by the generally accepted meaning of the terms employed. The course of a river has a definite meaning, and refers only to the direction of motion of the main body of water, or its main thread, or that portion of the stream moving on a line parallel to its banks, which, in its normal state, is ever flowing onward and outward to the ocean, and necessarily excludes its lateral waters that merely wash the fringes or meanders of the shore, and as well, excludes therefrom the small bays, inlets, creeks, coves and indentations constituting the meander lines of its shore.

Jeffries *vs.* Omaha Land Co., 134 U. S., p. 178.
Mitchell *vs.* Smale, 140 U. S., p. 406.
Hardin *vs.* Jordan, 140 U. S., p. 371.
St. P. & Pac. R. R. *vs.* Shurmeier, 7th Wall. 272-290.
Lowndes *vs.* Town of Huntington, 153 U. S., 1-32.

The "course of a river" is a line parallel with its banks. The "current of the stream" will vary from the general course of the river, depending upon a variety of circum-

stances. Short bends in the river will drive the current diagonally from one bank to the opposite bank. Exposure to the winds on one side, and the protection of high banks on the other, will produce the same results.

Attorney General *vs.* Hudson River R. R. Co., 9th New Jersey Equity, 526, etc.

Battery Cove which includes the land in controversy is no part of the course or of the navigable body of the river Potomac, and the Act of Congress referred to negatives the Appellee's interpretation thereof, when considered in the light of the authorities, and of the facts in the record.

The defendant in error, also contended, that a grant of public lands, bounded by a navigable river, extends only to meanders of the shore line of the river. We submit, notwithstanding, that such is not the general rule, and that this Court has held otherwise in the following cases.

Meander lines are run in surveying public lands bordering upon navigable rivers, not as boundaries of the tract, but to ascertain the quantity of the land subject to sale; and the water course, and not the meander line as actually run on the land, is the boundary.

Jeffries *vs.* Omaha Land Company, 134 U. S., 178.
Mitchell *vs.* Smale, 140 U. S., 406.
Hardin *vs.* Jordan, 140 U. S., 371.
St. P. & Pac. R. R. *vs.* Shurmeier, 7th Wall, 272-290.

In a grant of land situated on Long Island Sound, the term "the Sound" named as a boundary, means the body of water known by such name; and that term does not include waters, such as Huntington Bay, opening into or connected therewith, so as to exclude them from the grant.

Lowndes *vs.* Huntington, 153 U. S., 1.
Newson *vs.* Prior, 7th Wheaton, p. 8.

In the Howsing grant it will be observed that it is expressly stated that the line is a southwesterly line from Alexander's Island to Jones' Point which is, a straight line,

and includes within this line the creeks, bays, or inlets intervening between those two points and in express terms excludes the suggestion made by counsel for the defendant in error in the Court of Appeals, that the lines of said patent are the meander lines of the river. This line is run from monuments, the same being, Alexander's Island to the north point of Great Hunting Creek, said creek being formerly known as north point of Indian Cabin Creek, now known as Jones' Point. Where monuments have been established, and it becomes necessary to run a line between, or to, them, the presumption is that the line to be run is a straight one.

Slade *vs.* Etheridge, 13 Ired. Law, 553.
Henshaw *vs.* Mullens, 121 Mass., 143.
Jenks *vs.* Morgan 6th Gray, 448.
Kingsland *vs.* Chittenden 6 Lans., 15.
Allen *vs.* Kingsbury, 16 Pick., 238.
Dickson *vs.* Wilson, 82 N. C., 487.

And so where there are no natural monuments, but a side of a survey or description has been left open.

Wharton *vs.* Garvin, 34 Pa. St., 340.

This presumption is not overcome by the fact that monuments are at points on the same river.

Slade *vs.* Etheridge, Supra.

The effort of defendant in error, in the Court of Appeals, to limit the effect of the terms employed in the Howsing grant "including several creeks or inlets for the said quantity" to things like Four Mile Run, is not justified by the record, for there is nothing shown on any plat in evidence to indicate there is any other bay or stream within the Howsing grant like Four Mile Run. Four Mile Run, alone, does not answer the inclusive terms of the grant as to several small creeks and inlets, etc. These terms embodied in the grant must be considered in construing the grant and it has been so held by the authorities above cited.

The further contention of defendant in error, in the Court of Appeals, that Alexander's Island and Pearson's

Island, shown upon the plats, Exhibits "9" and "16," of 1693 and 1741, as islands then existing in the river, were only islands in name and not in fact, and that the former was separated only from the mainland by a gut, and that the latter has become fast to the mainland, is not sustained by the record; and we beg to say in reply, that the learned counsel was speaking of the present situation, and not of the situation disclosed by the record. If permitted to do so, I may say from personal recollections, both of these islands were separated from the mainland by the waters of the river Potomac. Alexander's Island was reached by a bridge and causeway from the Virginia mainland, and that the present situation has been brought about by artificial fills, by accretions and by freshets and like causes, and that the same is substantially true as to Pearson's Island; but these matters are *de hors* the record. The fact remains that Exhibits "9" and "16" show that both in 1693 and 1741, these islands were separated from the mainland.

Referring to the right of the crown to make grants of the fee to the soil under the waters of navigable rivers, we have this to say: That there is ample evidence that the crown exercised that right in this country, and the authorities seem to sustain that right, subject, however, to the right of his subjects to the navigation of the rivers and the common of fishery. It is not contended, that such a grant of the soil under the waters of a navigable river, carries with it the right to so obstruct the river as to impair or destroy its natural uses, but that such a grant could, can and has been made along the shores of navigable rivers in this country, subject, however, to the paramount right of navigation and the common of fishery.

Lowndes *vs.* Huntington, 153 U. S., 1.
Archer *vs.* Greenville, Sand & Gravel Co., 223 U. S., 60-70.
U. S. *vs.* Cress, 243 U. S., 316-362.
U. S. *vs.* Chandler-Dunbar Water Power Co., 229, U. S., 51.

Justice Lurton, who delivered the option in the last above cited case, says: "This title of the owner of fast lands

upon the shore of a navigable river, to the bed of the river, is at best, a qualified one. It is a title which inheres in the ownership of the shore; and, unless reserved or excluded by implication, passes with it as a shadow follows the substance. It is subordinate to the public right of navigation and however helpful in protecting the owner against the acts of third parties, it is of no avail against the exercise of the great and absolute power of Congress over the improvement of navigable rivers."

Lewis on Eminent Domain, Secs. 78-83, inc.

The defendant in error, bases its claim in this case to the fee of the soil under the waters of Battery Cove, upon the grant of Charles I in 1632, to Cecil Calvert, (an individual) of the territory of Maryland and the Potomac River to high-water mark on the Virginia side thereof.

The right of the crown, or the state, to make grants of the soil under navigable rivers, seems to have been granted in the cases of Morris against United States, and of Maryland *vs.* West Virginia. In the first mentioned case reported 174 United States, p. 225, this court uses the following language: "Nor does it appear that Virginia ever exercised the power to grant ownership in the islands or soil under the river, to private persons." In the last named case, at page 500, the court referring to the Potomac River, said: "There is no evidence that Maryland has claimed any right to make grants on that side of the river," meaning the Virginia side thereof.

It is clearly shown by Exhibit "5," Government plan of the improvement of the river Potomac at Alexandria and House Document, No. 1253, accompanying the same, page 173 to 182, inclusive, of record, all of which are made a part of the Act of Congress of June 25th, 1910, that no part of the filled area of Battery Cove, had previous to said fill, at low water mark or mean low tide, a greater depth than two feet, and this only in one place near the extreme end of Jones' Point, the residue of the area had an average depth at low tide of less than one and five-tenths feet, which is conclusive of the fact that at no time was said cove a part of the course or the navigable portion of the river.

Third

The prescriptive right of the State of Virginia, to proprietary and territorial right, sovereignty and jurisdiction of the land in dispute.

It is material to this case to note in the beginning of this discussion the fact that, the plaintiff in error, does not deraign title, or claim territorial jurisdiction in Virginia and its courts, by virtue of the proprietary grant of 1688, to Lord Culpeper, of the Northern Neck of Virginia, but adverse to the Culpeper grant; and claims title and jurisdiction in Virginia and its courts, by virtue of the Colonial charters granted by James I, to the Colony of Virginia, the crown grant under the seal of the Colony of Virginia, made in 1669, to Robert Howsing, of six thousand acres of land on the freshes of the Potomac River, and by compact and other facts shown by the record.

The Howsing grant being in 1669, was, therefore, nineteen years prior to the Culpeper grant, which was in 1688. It appears from the act of the General Assembly of Virginia, of 1748, that many persons had taken up large quantities of land within the territory granted to Lord Culpeper, and had obtained Crown grants and patents thereof under the seal of the Colony; and that Lord Fairfax, successor in title to the Culpeper grant, consented, before the King and his Council, that these grants so made by the Crown within the territorial boundaries of the Culpeper grant, should be confirmed to the several grantees, their heirs and assigns. And they were, in fact, confirmed by the act of the General Assembly of Virginia of 1748 (paragraphs *(b)*, *(c)*, *(d)*, *(f)*, *(g)*, *(h)*, 31 to 34 inclusive, printed Record).

The Howsing grant included Holmes' Island, now known as Alexander's Island, and Pases' Island, later known as Pearson's Island, and several small creeks or inlets on the Virginia side of the Potomac River between Holmes' Island and the north point of Indian Cabin Creek, said point and creek now being respectively known as Jones' Point, and Hunting Creek (page 67, printed Record. Exhibits 9 and 16).

In the early history of the country, the various colonies were either royal or proprietary. In royal provinces, the

Crown retained the right of soil, and claimed and exercised the right of granting land; while in the proprietary grants the right of soil was vested in the Lord proprietor, who had power to dispose of the soil as he might think proper.

Cyc. Vol. 32, 1157, and cases cited.

The grant of Charles I to Cecelius Calvert, Lord Baltimore, in 1632, and the grant of James II to Lord Culpeper, in 1688, were proprietary grants; the charter of 1606, 1609, 1611 and 1612, to the Colony of Virginia, were Colonial grants. The grant under the seal of the Colony of Virginia to Robert Howsing, was a Crown grant, and so recognized as appears by the facts in the record (paragraph (*h*), pp. 33 and 34, and paragraph (*g*), pp. 115 to 118, inclusive, printed Record).

In the Court of Appeals, the defendant in error, contended that the claim of the plaintiff in error, of priority of the Howsing Grant, over the Culpeper grant, was without merit; we submit, however, this contention is not sustained by the record, or by the History of events preceding the Culpeper grant.

The contention of the defendant in error, being that the Howsing grant was subordinate to the Culpeper grant, and that in fact, Howsing derived title from the Culpeper grant, because of the grants of Charles II to Hopton and others, and to the Earl of St. Albans and others.

The history of the two last mentioned grants, is as follows: Charles II in the first year of his reign, granted to Ralph Lord Hopton, Henry Earl of St. Albans, by the then name of Henry Lord Jermyn, John Lord Culpeper, John Lord Berkley, of Straton, by the then name of Sir John Berkley, Sir William Morton, Sir Dudley Wyatt, and Thomas Culpeper, all the territory lying between the heads of the rivers Rappahannock, and Quiriough or Potowmack, and the Chesapeake Bay, now known as the Northern Neck of Virginia.

John Lord Culpeper, Sir Dudley Wyatt and Thomas Culpeper, being dead, and Lord Hopton having sold his interest in the grant to John Trethewey, Esq. This grant was *sur-*

rendered and cancelled; and in the twenty-first year of his reign, Charles II granted the territory to Henry Earl of St. Albans, John Lord Berkley, Sir William Morton and John Trethewey, the last named grant contained the express proviso, that said patent nor anything therein contained, should extend or be construed to infringe, to make void or otherwise prejudice any contract or contracts, grant or grants whatsoever, theretofore made or granted by the Governor and Council of Virginia, unto any planters or other inhabintants, in the actual possession thereof, by virtue of any such grant made before September of the thirteenth year of his reign. The St. Albans grant contained a further proviso, that such grant was limited to one and twenty years, as to all lands not settled, etc.

There is no evidence in the record, that any part of the territory was possessed, inhabited or planted by the means, or procurement of said patentees, their heirs or assigns. The History of these grants shows to the contrary.

Charles I was beheaded January 30, 1649. Charles II was then in France, and during the first year of his pretended reign; and when he made the grant to Hopton and others, he was a fugitive, and remained a fugitive during the life of the Commonwealth (a *de facto* government), and did not really become King until the fall of the Commonwealth in 1660. The validity of the grant to Hopton and others is doubtful; and the fact of his exile was probably the reason for its surrender and cancellation. The grant to St. Albans and others was made in the twenty-first year of the reign of Charles II, or May 8, ~~1670~~ 1669; and the Culpeper grant by James II was made in the fourth year of his reign, or September 27, 1688. ~~Both~~ The ~~Stubborn fact~~ Culpeper grants ~~were~~ was subsequent to the Howsing grant of October 21, 1669.

Revised Code of Va., Vol. 1, pp. 343-350.
Hunter *vs.* Fairfax, 7th Cranch, 603.
Columbian Cyclopedia, Vol. 6, Chas. II.
Columbian Cyclopedia, Vol. 10, England.

The Howsing grant was a grant in fee, and contained no reservation of rents whatsoever, and its location was fixed

before the grant was made, as appears from the grant itself, wherein its location and boundaries are particularly set forth. Printed Record, p. 67, and plats, Exhibits 9 and 16.

The record shows that Howsing and those claiming under him have been in possession under his grant since October, 1669. Paragraph (*g*), pp. 115 to 118, inclusive, printed Record, and Exhibits 9 and 16.

It was not until after 1736 the boundaries of the Culpeper grant were known. It is likewise an historical fact that Lord Fairfax, successor in title to the Culpeper grant, after 1738, voluntarily petitioned the Crown to confirm all grants within the boundaries of the Northern Neck made by the Crown under the seal of the Colonial Government of Virginia, so that the lines of the Culpeper grant might be clearly ascertained; and that because of this petition, the Crown did confirm those grants, and the act of 1748 of the House of Burgesses of the Colony of Virginia, referred to in the record and the briefs of counsel, was adopted to settle finally any controversies between Lord Fairfax and the grantees of the Crown through the Colony, within the Northern Neck.

Hits *vs.* Fairfax, 4 Call. Va., p. 42, &c.

The Howsing grant shows that the Crown of England, by its duly constituted representative in the Colory of Virginia, in 1669, claimed by right of territorial ownership, sovereignty and jurisdiction, the power to make that grant, including the islands in the river Potomac and the soil under the waters of the creeks and inlets within the lines of said grant. This claim has been asserted and acted on from 1669 up to the present, covering a period of two hundred and forty-three years, and without question until the year 1912; and by reason thereof, said grant of the islands and the soil under the waters of the creeks and inlets within its boundaries, has by prescription, become incorporated in the territorial boundaries, sovereignty and jurisdiction of Virginia. As appears by the record here, this prescriptive right had become established before the Maryland cession of 1788 to the United States, there having then elapsed one hundred

and nineteen years between the date of said grant and the date of said cession.

The Howsing grant of 1669, the legislation of the Colony and State of Virginia from 1753 to 1789, and from 1846 to 1912, the making of land by Virginia and her citizens into the Potomac River all along the Alexandria riverfront, covering a distance of two blocks east of the shore line of 1748, making fourteen city blocks, and including streets, containing an area of about thirty-five acres of land, sustains the prescriptive claim of territorial, sovereignty and jurisdiction in Virginia, of the land in dispute.

The Colonial Charters of Virginia of 1606, 1609, 1611 and 1612, by James I, were not revoked in 1623, as contended by defendant in error in the Court of Appeals.

It is true the charter of 1609 was revoked by the judgment of the King's Bench, in 1623; but it is also historically true the English Colony in Virginia had its foundation and beginning under the several charters of James I, and that a colonial government, subservient to the Crown of England, was established under them as early as 1619; and that, from the period of said revocation of 1623, Virginia was considered and treated in England, and in this country, as a Royal Colony; and all grants of land in the Colony of Virginia, from 1623 and subsequent thereto, emanated from the Crown. It is likewise true historically that the boundaries of the Culpeper grant were unknown and unascertained until sixty-seven years after the Howsing grant.

Hite *vs.* Fairfax, 4 Call. Va., p. 42, &c.

That possession under the Howsing grant of a part of the land comprehended within its boundaries, constitutes possession of the whole; especially is this true, where acts of possession and claim of ownership under said grant continued for a period of two hundred and forty-three years, and the exercise of territorial sovereignty and jurisdiction of the State of Virginia and the City of Alexandria, have continued for so long a period; and taxes have been imposed and collected thereon by both Virginia and the City of Alexandria during all that period, except the period between

the cession and recession of the Virginia territory. All titles as shown by the record here, to property within the lines of the Howsing grant in Alexandria City and County, including Alexander's Island and Pearson's Island, and to the made lands on the Alexandria riverfront, are recorded in Virginia.

Jackson *vs.* Camp, 1 Cowper, N. Y., 605-612.

This constructive possession has its origin in the maxim of the common law: "Possession of a part shall be construed as possession of the whole."

Garrett *vs.* Ramsey, 26 W. Va., 345-351.
Lowndes *vs.* Huntington, 153 U. S., 1-32.

Lord Baltimore, the Colony and State of Maryland, and the United States were bound to take notice of any adverse claim to his or their territory, and as well, the encroachment upon, and occupation of any portion thereof, and to act in respect thereof, and their failure to do so, upon the facts set forth in this record, and for the space of time, therein shown, or the prescriptive period, worked a change in the boundary line, by virtue of the doctrine of prescription, and that, notwithstanding the original line of the Calvert grant. The grant to Howsing constituted an open, notorious, and adverse claim and the public assertion of proprietary rights and jurisdiction in and over the islands and the soil under the waters of the creeks, bays and inlets on the Virginia side of the Potomac River, within the lines of said grant. This assertion by Virginia of proprietary right and jurisdiction, in so far as anything appears in this record to the contrary, had never been contested from 1669 until this controversy arose. Virginia had acquired this proprietary right and jurisdiction by prescription and they were established prior to the compact of 1785, and as well before any cession by either Maryland or Virginia of territory for the District of Columbia.

The filled area known as Battery Cove, is within the territorial boundaries of the City of Alexandria, State of Virginia, because within lines on the Virginia side of the Po-

tomac River, long since established by prescription, arising from open, notorious, and continuous adverse claim of territorial ownership and jurisdiction over the same, from 1669 down to the cession of 1789, by Virginia to the United States, of the territory comprehended in Alexandria city and county, and from 1846, the date of the recession of said territory to Virginia, until the present time.

It is a well-established doctrine, that prescription applies to sovereignties, as adversary possession applies to individuals, and that sovereignties may lose territory by prescription as individuals may lose their title to real estate by adversary possession.

In Rhode Island, *vs* Massachusetts, 4th Howard, 591-639, this court said:

> "No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is particularly the case in regard to matters which rest in memory and are consequently affected with the lapse of time, and fall with the lives of individuals. For the security of rights, whether of States or of individuals, long possession under a claim of title is protected and there is no controversy in which this great principle may be invoked with greater justice and propriety than in the case of disputed boundary."
>
> "The tranquility of the people, the safety of the States, the happiness of the human race, do not allow that the possessions, empire and other rights of nations should remain uncertain, subject to dispute and ever ready to occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription, founded on length of time as a valid and incontestable title."
>
> Vattel, Law of Nations, book 2, chap. 11, section 149.

The writers on international law have questioned how far that peculiar species of presumption arising from lapse of time which is called prescription is justly applicable as be-

tween nation and nation; but the constant and approved practice of nations shows that by whatever name it be called the uninterrupted possession of territory or other property for a certain length of time by one State excludes the claim of every other in the same manner as by the law of Nature and municipal code of every civilized nation, "a similar possession by an individual excludes the claim of every other person to the article in question."

Wheaton, International Law, part 2, chap. 14, section 164.

Indiana *vs.* Kentucky, 136 U. S., 479.

Virginia *vs.* Tennessee, 148 U. S., 503-523-524.

Maryland *vs.* West Virginia, 217 U. S., pages 1-577-585.

Phillips *vs.* Payne, 2d Otto, 130.

The history of the town, city and county of Alexandria, in so far as they are comprehended within the lines of the Howsing grant of 1669; the claim of title and of possession, under said grant from that date until the present; the acts of the General Assembly of Virginia, before and after the cession by Virginia of territory for the District of Columbia, and since the recession of such territory, show conclusively, that Virginia has consistently and continuously claimed and exercised proprietary rights and territorial jurisdiction in the Potomac River from low-water mark at one headland to low-water mark at another headland, including all the coves, bays, creeks and inlets within the lines of the Howsing grant on the Virginia side of the Potomac River, which, of course, includes Battery Cove; and show also, that Virginia had acquired title and jurisdiction to the islands, bays, coves, creeks and inlets within the lines of said grant before the cession by Virginia of ~~1670~~ 1789 to the United States, and that this claim by Virginia does not appear by anything in the record to have been contested by either Maryland, or the United States until this present controversy began (paragraphs (*j*), (*k*), page 78, printed Record).

At the date of cession by Virginia to the United States

it appears from the record that the town of Alexandria was an incorporated town, and that the lines to which the corporate limits of said town could be extended were fixed by the Statute laws of Virginia as follows: Beginning at Great Hunting Creek and running thence parallel with Fairfax Street, to Four Mile Run or Creek, so as to intersect King Street (when extended) one mile west from the courthouse; thence eastwardly down the said creek or run to its confluence with the Potomac River; thence southwardly down the said river to the mouth of Great Hunting Creek, and thence westwardly up the said creek to the beginning, and that such territory should be subject to the regulations prescribed by the General Assembly, whensoever the proprietors of land within the aforesaid district should respectively incline to lay out the same in town lots, for the purpose of building thereon, etc. (paragraph (*d*), pp. 98 and 99; paragraph (*d*), pp. 72 to 74, inclusive, printed Record).

The city of Alexandria and a large part of the county of Alexandria are included in the grant of 1669 to Robert Howsing, of six thousand acres of land, bordering on the Virginia side of the Potomac and running from a point nearly opposite Anabstan Island, in a southwesterly direction to a pokecory standing at the north point of Hunting Creek (then called Indian Cabin Creek), which included several small creeks or inlets to make the quantity of land (paragraph (&), pp. 67 and 68, printed Record, and Exhibits "9" and "16").

The town of Alexandria was established at Hunting Creek Warehouse, on the Potomac River, by an act of the General Assembly of Virginia, of 1748 (paragraph (*a*), pp. 92 to 94 inclusive, printed Record), and is shown by plan of the town in Exhibit "1," end of Record.

By Exhibits "1" and "3," it is shown, there were three distinct headlands or points projecting into the Potomac River, viz., Jones' Point, then known as Piper's Island; Point Lumley and Point West, and there was a deep cove between Jones' Point and Point Lumley, extending in shoreward as far as Water, now Lee Street, and another cove between Point Lumley and Point West, extending in

shoreward as far as the west side of Water, now Lee Street, in said town.

That between the act of 1748, establishing the town, and the act of cession, of 1789, by Virginia to the United States, sundry acts relating to the town were passed by the General Assembly of Virginia. The first being the act of November, 1753, to dock the entail of certain lands whereof Gerard Alexander was seized, etc., which shows that title and possession of the Howsing Patent had become vested in the ancestors of Gerard Alexander (paragraph (*b*), pp. 94 to 96 inclusive, printed Record).

The acts of the General Assembly of Virginia, of 1762, 1772, 1779, 1782, 1786 and 1789, show that the trustees of Alexandria laid off and sold lots in the marshes of the coves, inlets or bays incorporated in the town, made regulations as to the improvement of these marsh lots, made additions to the territory of the town, extended the corporate limits thereof, provided for the building of landings and wharves into the river, made regulations as to the arrival and departure of vessels at these landings and wharves, extended Union Street from the northern to the southern limits of the town, across both of said coves, and extended the eastern boundaries of the town into the Potomac River, by filling in and making fast land within these coves, to a point beyond the extreme end of both Point Lumley and Point West, all of which acts constituted notorious, continuous and adverse acts of proprietary right, jurisdiction and possession over the soil under the waters of these coves, and a claim by the State of Virginia and the city of Alexandria that the same were within the territorial boundaries and jurisdiction of both (paragraphs (*c*), (*d*), (*e*), (*f*), (*h*), pp. 96 to 101, inclusive, and paragraph (*e*), page 74, printed Record).

The Virginia act of cession (paragraph (*m*), pp. 41 and 42, printed Record), provided, that nothing therein contained should be construed to vest in the United States any right of property in the soil, or to affect the rights of individuals therein, otherwise than as the same should or may be transferred by such individuals to the United States.

There is a similar proviso in the act of cession by Maryland (paragraph (*j*), page 18, printed Record).

The act of Congress of July 16th, 1790, 1st Stat. at L., 130, (paragraph (*f*), p. 16), and the act of 1801, (paragraph (*k*), pp. 18 to 21, inclusive, printed Record), section 1, provide:

> "That the operation of the laws of the States within such district shall not be affected by this acceptance until the time fixed for the removal of the Government thereto, and until Congress shall otherwise provide by law."

The authorities hold that when cession is made of territory, under circumstances such as existed here, that:

> "When jurisdiction is so ceded, the municipal laws of the State, except in so far as they are inconsistent with the laws of the United States, remain in full force until abrogated by the United States."
>
> Cyc., vol. 39, page 731, citing Commonwealth *vs.* Hutchinson, 2 Parsons, Equity cases (Pa.), 384.
>
> United States *vs.* San Francisco Bridge Co., 88 Federal Reporter, 891.

The act of Congress of 1801, providing for the government of and jurisdiction over the territories ceded for the District, that portion of the territory ceded by Virginia to the United States was laid off as a separate county and the city of Alexandria remained a separate municipality, without change in the boundary lines between the date of cession and the date of recession.

> "Section 2. That the District of Columbia shall be formed into two counties: one county shall contain all that part of said District which lies on the east side of the river Potomac together with the islands therein, and shall be called the County of Washington. The other county shall contain all that part of said District which lies on the west side of said river and shall be called the County of Alexandria."

"Section 16. That nothing in this act contained shall in anywise alter, impeach, or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown, or any other body corporate or politic, within said District, except so far as relates to the judicial powers of the corporations of Georgetown and Alexandria."

Paragraph (*k*), pp. 18 to 21 inclusive, printed Record.

There were only three Amendments by Congress to the charter of Alexandria, between the date of Virginia's cession of territory and the date of its recession, which are as follows:

Act of February, 1804, 2 U. S. Statutes at Large, page 255; act of May, 1826, 4 U. S. Statutes at Large, 162, and act of February, 1843, 5th U. S. Statutes at Large, page 590 (paragraphs (*j*), (*k*), (*l*), p. 102, printed Record).

None of these amendments change the corporate limits or jurisdiction of Alexandria as they existed under the laws of Virginia at the date of cession, but by sections 2 and 16 of the act of 1801 the corporate limits, jurisdiction, charter and laws relating to Alexandria remained unchanged until after the recession. Instead of changing the corporate limits of the town, Congress, on the contrary, preserved the integrity thereof, as shown by the act of 1826, 4th U. S. Statutes at Large, page 163 (paragraph (*k*), page 102, printed Record), and the second section of the act of 1801 above cited.

Section 2 of the act of 1826 is as follows:

"Be it further enacted, that the Common Council of Alexandria, shall have power to provide for the establishment, maintenance and superintendence of public schools, and for registering of births, marriages and deaths, and shall have power to preserve the navigation of the Potomac River within their jurisdiction; to erect, repair and regulate public wharves, deepen docks and basins, and to limit the extension of private wharves into the harbor."

At the time the act of 1801 was passed, the only laws prescribing the territorial jurisdiction of the Common Council of Alexandria were laws of Virginia before referred to. The line to which the corporate limits of Alexandria could be extended into the Potomac River at the time of the cession to the United States can be seen by drawing a line from the confluence of Four Mile Run or Creek with the Potomac River, to the mouth of Hunting Creek, on Exhibit No. 13.

Since the recession of the territory ceded by Virginia to the United States, there have been a number of acts of the General Assmbly of Virginia relating to the corporate limits or boundaries of Alexandria, the first being an act concerning the Alexandria Canal Company, of April, 1848 (paragraph *(i)*, page 77, printed Record).

This act authorized said company to build such wharves, piers, basins, and other works on the Potomac River at the outlet locks of said canal as might be necessary and proper for the accommodation of its trade. These locks and piers extended into the river, as will appear from United States Government Coast Survey, Exhibit "8."

The acts of the General Assembly of Virginia amending the charter of Alexandria after the recession, are as follows:

Act of May 7, 1852 (paragraph *(m)*, pp. 102 and 103, printed Record), section 1, changes the name of the town of Alexandria to that of the city of Alexandria; and section 22, provides for the extension of the limits of the city on the north and west, as follows: Beginning in the Potomac River at a point distant northerly in the direction of Fairfax Street, 419 feet, 2 inches, from the north line of the then corporate limits of the town, in said river, and running thence westwardly, parallel with said north line, to a point at which it would intersect the present western line if extended north 419 feet, 10 inches, thence southerly with the present line, and ten feet west of the west bank of Hooff's Run to the line dividing Alexandria and Fairfax counties; thence southeasterly with said dividing line to the present southeastern corner of said town. The corporate limits at this time is shown by a dotted line marked "Corporation

Line," Exhibit "6." The extension of the line under this act included the canal outlet, locks, wharves, and piers on the Potomac River.

Act of February, 1853 (paragraph (*n*), pp. 103 and 104, printed Record), defines the limits of the city of Alexandria as follows: That the limits of the city of Alexandria shall be extended on the north and west so as to embrace the territory within the following boundaries: Beginning in the Potomac River at a point distant northwardly, in the direction of Fairfax Street, 419 feet 2 inches from the then north line of the corporate limits of the same in said river; and running westwardly parallel to said north line to intersect the west line of said limits, produced northwardly 419 feet 2 inches; thence southwardly with the said west line produced to the southwest corner of said limits; thence eastwardly with the said line into the river, and then northwardly to the beginning (Exhibit No. "6").

Act of April 2, 1858 (paragraph (*o*), pp. 104 and 105, printed Record), provides that the limits of the city shall be as follows: Beginning on the Potomac River at a point distant northernly in the direction of Fairfax Street 595 feet 9 inches from the north line of Montgomery Street in said city, and extending into said river, and running thence westwardly parallel with said north line to a point at which this course will intersect a line 123 feet 5 inches west of a line parallel to the west line of West Street as then established when extended; thence southerly to the north line of Cameron Street, as then established; thence westerly in the direction of the north line of Cameron Street to a point in a line with the west line of the lot of the late Francis Peyton; thence southerly parallel to West Street to the south line of King Street extended; thence in a straight line to a point in a line dividing the counties of Fairfax and Alexandria from each other 10 feet west of Hooff's Run; thence southerly parallel to and distant 10 feet from Hooff's Run to the middle of Hunting Creek; thence with the middle of Hunting Creek into the Potomac River; thence up the said river to the beginning. This line is illustrated by reference to Exhibit "7," and includes the canal outlet, locks, wharves, and piers.

Act of February, 1860, changes the southwestern line of the city from the center of Hunting Creek to the old line of the District of Columbia, which is also the dividing line between Alexandria city and county and Fairfax County, as will appear from Exhibit "7" (paragraph (*f*), pp. 75 and 76, printed Record).

The acts of February 27, 1865, and February 20, 1871, make no change in the corporate limits of the city (paragraphs (*g*), and (*h*), pp. 76 and 77, printed Record).

From this history of the town and city of Alexandria it is clear, that from its earliest history up to the present time, the State of Virginia by the acts of its General Assembly, and other facts in the record, has openly, notoriously, and continuously claimed territory and jurisdiction, within lines that include Battery Cove and the filled area of land therein; and establishes beyond controversy that the State of Virginia and her citizens, at the time of her cession to the United States, had ownership of the shores of the Potomac River and the riparian right of extending out wharves and piers into said river, and jurisdiction over the same, and that such was the territory and jurisdiction which Virginia ceded to the United States, and was the same territory and jurisdiction which Congress, by act of 1846, receded to Virginia (paragraph (*f*), page 78, printed Record).

The corporate lines of Alexandria, under the Virginia acts of 1860, 1865, and 1871, are indicated by a long line drawn from Jones' Point to a point north of the canal outlet locks, wharves, and piers inside of which line is shown the bulkhead line and retaining wall at Battery Cove, Exhibit "13."

The acts of Congress offered in evidence on behalf of the defendant in error, (paragraph (*x*), pp. 29 to 31 inclusive, printed Record), relating to fishing in the Potomac River, were passed long after the act of recession, and these do not appear by any fact in the record, to have been enforced in the waters of the Potomac fronting Alexandria city.

The facts in this case (paragraphs (*j*) and (*k*), pp. 35 to 39, inclusive, printed Record; paragraphs (1) to (6), inclusive, pp. 84 and 85, printed Record, and paragraphs (*p*) and (*q*), pp. 105 and 106, printed Record), and other facts

in the record show that Virginia, prior to the cession to the United States and since the recession of her territory, has consistently claimed all the territory within the bounds of the Howsing Patent and the defined limits of Alexandria, including Battery Cove, and jurisdiction over the same within those lines. And it will further appear from the record, that the acts of Congress, have not been inconsistent with that claim, as is clearly shown by section 2 of the act of 1801 and by the act of 1826, heretofore referred to.

These territorial and proprietary right and jurisdiction of Virginia, were recognized by Congress in the acts introduced in evidence by the defendant in error, (paragraphs (*e*) and (*f*), page 5, printed Record), and by Exhibit "4," and accompanying House document 1253, offered in evidence by the plaintiff in error. These acts of Congress and said House document and Exhibit "4," do not provide for the reclamation of land lying under the waters of the Potomac in the District of Columbia; there is nothing in the acts, or in said document, or on the plat, to indicate that such was the purpose of the acts. The authority for the work contemplated, and the appropriation therefor, were not included in any act for the benefit of the District of Columbia. All provisions for the work, and the appropriation therefor, were contained in the rivers and harbors bill, wherein Congress was acting wholly under the commerce clause of the Federal Constitution. The acts of Congress relating to this particular work, in the performance of which, the making of the land within Battery Cove on the Virginia side of the Potomac was merely an incident, distinctly provided, for the improvement of the Potomac River at Alexandria, Virginia.

The act of June 25, 1910, 36th Statute at Large, chap. 382, page 630, provides for "Improving Potomac River at Alexandria, Virginia, in accordance with the reports submitted in House document No. 1253, 60th Congress, 2nd session, $60,000.00."

The act of February 11, 1911, 36th Stat. at Large, chap. 166, page 953, provides for "Improving Potomac River at Alexandria, Virginia. Completing improvement, $56,000.00."

House document 1253 and the survey and plat therewith, were made a part of the act of Congress of June 25, 1910, as fully and completely as if the same were at large set forth in the act itself.

The act of Congress of June 25, 1910, when House document 1253, and the survey and plat attached are read into the act, as it must be read to ascertain the purpose of Congress in this legislation, clearly recognizes the territorial rights and jurisdiction of Virginia over the whole line of the authorized improvement along the river front of Alexandria from Jones' Point to the northern corporate limits of said city. The report of the engineer officers of the United States, who made the survey of the work and who made all the plans and estimated the cost thereof, shows that the purpose of the work of improving the river at Alexandria and the port and harbor of said city, was to extend its commerce, and to give better wharf facilities and other privileges necessarily incident to its increasing and important trade as a city of 20,000 population, having large manufacturing, shipping, and commercial interests, with a trade extending over the whole length of the navigable waters of the Potomac River, the Chesapeake Bay, the Atlantic coast and foreign countries, and the center of five different railroad lines, with tracks skirting the wharf front of said city. The survey, plat, and House document No. 1253, Exhibit "4," shows, that the continuous black line, with stars across it at regular intervals, commencing at A, at the east end of Jones' Point and running thence to B, at the foot of Wolfe Street, in Alexandria, and from thence in a straight line to D, the northern city limits at the present time, is the bulkhead line in front of said city, and that the line of black short dashes, east of the bulkhead line, and parallel thereto, until it reaches the foot of Pendleton Street, where it diverges to the eastward until it reaches the northern line of the city limits projected into the Potomac River, is the pier head or wharf line of said city. It was under these plans the work of improving the Potomac at Alexandria and the filling in at Battery Cove, as an incident thereto, was done. The face of this survey and plan of work shows that its purpose, as stated in said House docu-

ment, was the betterment of the harbor facilities at Alexdria, by deepening the channel of the Potomac River, so as to furnish deeper water at its wharves and landings, from its southern limits at Jones' Point to the northern limits of the city. The bulkhead line indicates the point out to which the bulkhead, or water facing of the same, may extend into the river. The wharf line indicates the distance beyond the bulkhead line to which piers or wharves along the whole river front of the city may be built and extended into the river by Virginia and its citizens. The bulkhead line is fifty feet east of the retaining wall across Battery Cove, and the pier head or wharf line is one hundred feet east of the bulkhead line.

These facts clearly show that the territorial and proprietary right and jurisdiction of Virginia, extend out to the wharf line defined upon said survey and plat from Jones' Point to the north line of the corporate limits. Congress by said acts did not put any part of the proposed improvement on the wharf front of Alexandria, under the jurisdiction of the District of Columbia, but treats its strictly as a part of Virginia and as within her territory and jurisdiction. If the claim of the defendant in error, that the boundary line between the District of Columbia and Alexandria is high water mark agreeably to the Calvert Grant, can be made as to any part of the river front at Alexandria, it can unquestionably be made as to all of it and thus absolutely destroy every vestige of right of access by Virginia and her citizens to the waters of the Potomac River, and take into the district, fourteen blocks of Alexandria, with the streets, on the river front, including its wholesale business and manufacturing center, and railroad terminals.

That such is not the case is shown by House document 1253 and the report, survey, and plat made by the engineers of the United States Government Exhibit "4," from which it appears, the improvement had for its purpose, the removal of a bar that had formed in the Potomac River in front of Alexandria, and to give deeper water and better harbor facilities to said city, and that it was originally contemplated to deposit the excavated material on the flats of the Maryland side of the river, so as to deflect the current

of the river towards the Alexandria water front. The work of filling the area between said retaining wall and high-water mark in Battery Cove, seems to have been an afterthought and a mere incident to the work of deepening the harbor at Alexandria. It may be safely assumed that the change was found to be more economical in the execution of the general plan of improvement (pp. 5 and 173 to 182, inclusive, printed Record).

The facts offered in evidence by the defendant in error (paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), and (*k*), pp. 4 to 7, inclusive, printed Record), furnish a description of the parcel of land in controversy and show that it is a part of a larger body of land made whilst the Potomac River was being deepened in front of Alexdria and the harbor of said city improved. In the prosecution of the work a riprap wall was constructed on the submerged soil of the river Potomac, extending from a point at or near a line drawn from Lee Street on the south line of Franklin Street when extended and projected into the Potomac River (and within the lines of the property of the defendant), in a southeasterly direction to Jones' Point at low-water mark; that the land was made by pumping dredgings from the river into the space between the wall and high-water mark on the Virginia side of the Potomac. The work of building the wall was commenced September 6, 1910, and was completed April 26th, 1911, and the filling in of the area between the wall and mean high-water mark on the Virginia side of the Potomac was begun March 4, 1911, and completed December 29, 1912. At the date of the commencement of said wall the average depth of water within the filled area in front of the upland of the defendant was one and one-half feet at mean low-water and the range of the tide about three feet. The record does not show that any claim of title to, or jurisdiction over filled area, was ever asserted by the United States or its agents until January 8, 1912, when it caused to be constructed along the high-water line of the filled area a fence inclosing the same, together with signboards nailed to the posts thereof notifying all persons that said land was Government property, and that trespassers would be prosecuted.

It does appear from the facts offered in evidence by the defendant in error, (paragraph (*k*), pp. 6 and 7, printed Record), that the plaintiff in error immediately disputed the right and claim of the Government to the made land, or to inclose the area within the lines of its property on the river front, and tore down the fence erected around the same and resumed its possession thereof.

From facts introduced in evidence on behalf of the plaintiff in error, (paragraphs (*k*) and (*l*), page 78, and Exhibit 16, printed Record), it appears that all the filled area between said retaining wall and high-water mark on the Virginia shore of the Potomac, except a small corner thereof at Jones' Point, lies between a line drawn from Jones' Point, at low-water mark, to Point Lumley, at low-water mark, at the foot of Duke Street, and the Virginia shore of the Potomac, at high-water mark; which is clearly defined by Exhibits "3," "4," "5" and "7." The plat Exhibit "3" is a composite plat of the plan of Alexandria, upon which is shown three distinct points or headlands making into the Potomac River in front of said city—Jones' Point on the south, Point Lumley somewhat north of the center of the city, and Point West near the north line of the City limits.

Plat Exhibit "4" made by the engineers of the United States Government in connection with the improvement of the Potomac River at Alexandria, shows the location of Battery Cove and the lines and plans of such improvement from Jones' Point to the north line of the corporate limits of the city and that these lines include the canal locks, piers and wharves.

The plat Exhibit "5" with the letter attached of H. Gordon, engineer of Southern Railway Company, is a copy of House document 1253, upon which Mr. Gordon has indicated the bulkhead line and shows the location of the retaining wall at Battery Cove, and as well the location of said wall with reference to the bulkhead line, Jones' Point, and the property of the plaintiff in error, from which it appears that the retaining wall is located inside of Jones' Point, and the wharves of the plaintiff in error. Mr. Gordon has also shown on this exhibit the line of the river from Point Lumley to Point West, at the time the town of Alexandria was

established in 1748. Mr. Gordon's letter states that the bulkhead line is fifty to seventy-five feet outside of a line drawn from the extreme end of Jones' Point to the extreme end of Point Lumley, and that the retaining wall is within the lines of said bulkhead line and follows very closely a line which can be drawn from Jones' Point to Point Lumley, as they originally stood.

The plat Exhibit "7" is a plan of Alexandria made in 1845, and shows the dividing line between Alexandria City and Fairfax County at that time, on which is indicated the original District line, bordering on the southwest the original territory ceded for the seat of Government by Virginia. This plat shows that the District line did not include the whole of Jones' Point, but that it excluded a portion of the extreme end of the point which was never ceded to the Untied States by Virginia, and was not accepted and did not become a part of the District by any evidence appearing in this record, either by cession of Maryland or of Virginia. This fact is further illustrated by Exhibits "6" and "15," the latter a photograph from the Coast and Geodetic Survey of the United States, preliminary chart of the river in 1862.

The history of the Potomac River front, from Alexander's Island to Jones' Point, including particularly the history of Battery Cove and other important historical facts which appear in the record, is of interest here as furnishing light upon the issue now being tried. From facts offered in evidence (paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*), pp. 7 to 11, inclusive, printed Record), it appears that in 1748 there were three distinct points or headlands opposite the City of Alexandria projecting into the river—Point West, Point Lumley, and Jones' Point. That Point West is the present location of the Alexandria Fertilizer and Chemical Company, Point Lumley is the present location of the Pioneer Mills, and Jones' Point has been recognized by that name for over one hundred years. These facts are clearly identified in the record and by the various plats and exhibits offered in evidence.

In the facts offered in evidence on behalf of the defendant in error (paragraph (*d*), pp. 82, printed Record), it is stated: "Although land has been filled in at or near the

shipyard at the foot of Franklin Street, the evidence of the topography of the land and the plats indicate there has always been in existence a point of land there intermediate between Jones' Point and Point Lumley."

It is true the plats Exhibits "9" and "16," offered in evidence by the plaintiff in error, show that between Point Lumley and Jones' Point there is a slight bulge in the shore line, near the ship yard of the plaintiff in error. But there is nothing in the record to show that it was of sufficient importance to be indicated as a point or recognized as a headland. The facts introduced by the plaintiff in error, (pp. 8 to 11, inclusive, printed Record) show that this bulge did not extend east of the west line of Union Street, and that all the land, including the street and shipyard property, was made by filling in the river prior to 1785, and before the cession of any territory by either Virginia or by Maryland to the United States. And on page 9, printed Record, that as early as 1748 Point Lumley projected into the river a very considerable distance east of the west side of Union Street, and by reference to plat Exhibit 12 and other exhibits it will appear that Union Street is fifty feet in width, the Potomac Strand or Strand Street is one hundred and eighty feet east of Union Street; that Strand Street is twenty feet in width, and Point Lumley is east of Potomac Strand or Strand Street, which places the location of the point at least two hundred and fifty feet east from the west side of Union Street.

Plat Exhibit "14" and plat Exhibit "2," both offered in evidence by the plaintiff in error, show the river front of Alexandria in 1798 and 1804, and the facts offered in evidence (paragraphs (*c*), (*d*), (*e*), (*f*), and (*g*), pp. 8, 9, 10 and 11, printed Record show that the cove between Point Lumley and Point West had been filled in from the west side of Lee Street approximately two blocks, including Water, now Lee Street, and Union Street, and that the cove between Jones' Point and Point Lumley had been filled in from the west side of Union Street for the distance of about a block and a half east into the river, and that Union Street had been filled in and extended from Point Lumley to the south line of the shipyard property. The fill between Point

West and Point Lumley extended into the river to the extreme end of both of said points, and the fill between Point Lumley and Jones' Point extended beyond the shore lines of 1748, nearly on a line even with Point Lumley to and beyond the south line of the property of the plaintiff in error, and that all of this was done prior to 1785 and prior to any cession by either Maryland or Virginia of territory for the District. From the date said land was made, up to the present time, it has been continuously claimed as a part of the territory of Virginia, and said State has exercised dominion and jurisdiction over the same, and both Virginia and Alexandria have collected taxes thereon from their earliest history up to the present time, and all conveyances relating to the same have been recorded either in Fairfax County or Alexandria. All these facts combine to show that Virginia and Alexandria have claimed both the territory and jurisdiction within the lines of the Howsing grant, from Jones' Point to the northern limits of said city, from the earliest history of said town to the present time (paragraph (*j*), p. 78, printed Record).

Plat Exhibit "11" shows the shipyard property of the plaintiff in error, as it stood in 1886, and that the southern limits of Union Street is south of the south line of the shipyard, and that the filling in of Union Street deflected the shore line of the river from the west side of Union Street around the filled portion of the shipyard, and that the shore of the river returns north of the shipyard, to a point near the east line of Union Street, and shows, also, that the original cove between Point Lumley and Jones' Point extended inland to about the west line of Water, now Lee Street, and that the curve of the river shore did not bulge into the river east of the west line of Union Street at the foot of Franklin Street, and from thence followed the west line of Union Street for some distance before it curved outward to Point Lumley.

The Howsing patent of 1669, from the Crown of England, under the seal of the colony of Virginia, for six thousand acres of land lying on the freshes of the Potomac River, is described as being at a red oak standing by a small branch or run of water near opposite to a small island,

commonly called and known by the name of My Lord's Island, extending down the river Potomac various courses, 3152 poles, making a southwesterly line to a pokecory standing at the north point of the creek named by the English, Indian Cabin Creek, which creek divides this land and the tract of land surveyed for John Matthews from said pokecory northwest and by west of said creek and main branch, 520 poles; and from thence north 1940 poles, finally east 720 poles to the red oak begun at, including several small creeks or inlets for the said quantity, etc. The line of this grant on the Potomac River is a southwesterly line to Jones' Point and includes the fee of the soil under the waters of the creeks, inlets, bays and coves of the Potomac, between that line and the Virginia shore of the river (paragraph (&), page 67, printed Record).

If, as before stated, the contention that the original lines of the Calvert grant of 1632, is the present boundary line between the District of Columbia and Alexandria, and is so held, it would cut off Alexandria entirely from the river, and place in the District of Columbia all the land made in said coves prior to 1785, covering a large number of city blocks, and would disturb the title of the owners thereof.

The plats Exhibits "9" and "16," give the shore line of the river, and show that from the southeast end of Holmes' Island, now Alexander's Island, to Piper's Island (now Jones' Point), is a southwesterly line, following the course of the river which always means the channel. These plats, when laid down upon the plats made by the Government for the improvement of the Potomac River at Alexandria, Exhibits "4" and "5," show that the line from Alexander's Island to Jones' Point is a southwesterly line. Not only does this line show that all the coves, inlets, and creeks within it were included in this patent, but the language of the patent itself expressly includes them. This grant was prior to the grant of James II to Lord Culpeper, of September, 1688 (paragraph (*g*), pp. printed Record), as also was the grant to John Matthews on the south side of Hunting Creek (paragraph (*e*), pp. 32 and 33, printed Record), and many others that were included in the grant of James II to Lord Culpeper.

The act of Virginia of 1748 (paragraph (*h*), pp. 33 and 34, printed Record), shows that disputes touching the boundaries of several letters-patent granted by Charles II and James II to the ancestors of Thomas, Lord Fairfax, it had been determined by the then present King in council, that said letters-patent included all the territory of land between the rivers Potomac and Rappahannock and the line now marked from the headspring of said river Potomac to the headspring of Rappahannock, commonly called the Conway, in which said tract or territory of land many planters had taken up great quantities of land and obtained grants and patents thereof from the Crown, under the seal of the colony of Virginia, and that Thomas, Lord Fairfax, had consented before the King, in Council, that the several grants and patents made by the Crown of the lands included in the boundary aforesaid, should be confirmed to the several grantees, their heirs and assigns. This act of assembly confirms all grants and patents whatsoever under the seal of the colony of Virginia for lands situate and lying within the boundaries of the letters-patent granted to the ancestors of Lord Fairfax, as then settled and determined, theretofore made and granted by the Crown, shall be held, deemed and taken to be valid and effectual, and that those to whom the same were granted, their heirs and assigns, shall forever thereafter peaceably and quietly have, hold and enjoy the said granted premises, respectively, according to such granted estates, etc. From this history it appears that the grant to Howsing was made by the Crown of England, and was so recognized by Lord Fairfax, who relinquished all his rights in the lands so granted.

The act of Virginia of 1753 (paragraph (*a*), pp. 94 to 96, inclusive, printed Record), and the Exhibits "9" and "16," show that the Howsing patent had passed into the hands of Robert Alexander, of the county of Stafford, and was at the time held by his descendants, and all the plats, Governmental and otherwise, show that this patent, together with Alexander's and Pearson's Island and the inlets, bays, creeks and coves on the Virginia side of the Potomac River, were included in said grant.

The facts in this case conclusively show that long prior

to 1785 the line of boundary and jurisdiction of Virginia extended out to the line of the Howsing patent, as also the lines of boundary of the town or city of Alexandria. This line is illustrated by drawing a line from Alexander's Island to Jones' Point, on Exhibit "8," and will include Battery Cove and all other creeks, bays, inlets, and coves along the river front between these points.

Plat Exhibit "15" is a plan of Alexandria, in 1862, photographed from the Coast and Geodetic Survey preliminary chart of the Potomac River. Upon this plat is indicated the bulkhead line provided for under the acts for the improvement of the Potomac River at Alexandria, before referred to, and within that line and inside of the end of Jones' Point is shown the retaining wall, between which and the Virginia shore is the land made in the course of such improvement. The line from Jones' Point to the north line of Alexandria indicates the corporation line in the river as defined by the several acts of the General Assembly of Virginia, from 1653 up to the present time, and the facts referred to in this and other headings of this brief show conclusively that the territorial limits and jurisdiction of Alexandria and of the State of Virginia included Battery Cove and the made land therein, of which the parcel of land in dispute is a part, from the date of the Howsing patent of 1669 to the present time.

The legislation of Virginia from 1748 to 1800 and from 1846 to the present time; the filling in of the cove between Point Lumley and Point West; the filling in of nearly one-half of the cove between Jones' Point and Point Lumley; the recordation of conveyances of such made land in the county of Fairfax and in Alexandria, and the assessment and collection of taxes upon all such made lands from the date they were filled to the present time, confirm the defendant's contention.

Add to the facts before referred to the circumstances showing that whilst Alexandria was a part of the District of Columbia, Congress preserved the integrity of the territorial and jurisdictional limits of Alexandria, and passed no act diminishing the territorial and jurisdictional limits of said

town; and that since said recession neither the United States nor the District government has, by any fact appearing in the record, made any single claim to the territory within these lines or exercised any act of jurisdiction over the same during the sixty-seven years previous to the time Battery Cove was filled, until January, 1912, they serve only to emphasize the position of plaintiff in error.

The facts offered in evidence (paragraphs (*c*), (*d*), (*e*), (*f*), pp. 8 to 10, inclusive, printed Record, and paragraphs (1) to (6), inclusive, pp. 84 and 85, printed Record), together with the other facts mentioned, show beyond doubt that Virginia, from 1669 until the present, or for over two hundred and fifty years, has claimed territorial and jurisdictional boundaries to include Battery Cove, and that Virginia and Alexandria have consistently exercised jurisdiction over the same by repeated and long-continued acts of territorial claim and jurisdiction.

The grant of 1867, by the State of Virginia, to Allen and Robert P. Dodge, of ninety-seven acres on the Potomac River, is but another fact confirming Virginia's jurisdiction and ownership of the shores of the Potomac on her side thereof, and, so far as the record shows, the right to make this grant has never been questioned.

In Louisiana *vs.* Mississippi, 202 U. S., pages 1-53, this court in its opinion, says:

> "As between the States of the Union, long acquiescence in the relation of a particular boundary, and the exercise of all dominion and sovereignty over the territory within it, should be accepted as conclusive, whatever the international rule might be in respect of acquiescence by prescription of large tracts of country claimed by both," citing, Virginia *vs.* Tennessee, 148 U. S., 503; Indiana *vs.* Kentucky, 11th Wallace, 395; Rhode Island *vs.* Massachusetts, 4th Howard, 591.

The land records of Alexandria City and County and Fairfax County, covering a period of over one hundred and twenty-seven years, show that the land comprising the ship-

yard of the plaintiff in error, was conveyed in a number of separate parcels by lines of description that included the soil under the waters of the river, on both the north and south boundaries of said property, and that the lines of all lots fronting the river on the east extended into the river; and that all the property is made land, by filling in the river between the year 1748 and 1789, from the west side of Union Street, east, for a distance of three hundred feet (except land in dispute) (pp. 8 to 11, inclusive, printed Record, and exhibit with stipulation filed May 23, 1919).

The Howsing grant being a Crown grant, and made only thirty-seven years after the grant of 1632, to Cecilius Calvert, Lord Baltimore; the subsequent confirmation by the Crown and Council of England, with the consent of Lord Fairfax, of Crown grants made in the Northern Neck of Virginia, and the fact that there is nothing in the record to show that Lord Baltimore or the Province of Maryland, at any time prior to the cession by Maryland and Virginia to the United States, questioned the right of the Crown to make the Howsing grant, constitute a state of facts showing a contemporaneous interpretation of the boundaries of the Calvert grant, and that such boundaries did not extend to high-water mark on the Virginia shores of the Potomac River, at least in so far as such boundaries conflicted with the boundaries of the Howsing grant. The failure of Cecilius Calvert or the province of Maryland to question the right of the Crown to make the Howsing grant, under the circumstances of this case, raises the legal presumption that said grant was acquiesced in by Lord Baltimore and the province of Maryland. That presumption is strengthened by the proceedings of the Crown and Council of England above referred to. That the Howsing grant is recognized as a Crown grant is shown by the act of Virginia of 1748 and the decision of the Supreme Court of Appeals of Virginia, in Birch *vs.* Alexander in 1791 (pp. 115 to 118, inclusive, printed Record), and by the opinion of the United States Supreme Court in Fairfax *vs.* Hunter, 7th Cranch, 604, and Cyc., vol. 32, page 1152, and cases cited.

In Fairfax's devisees *vs.* Hunter, 7th Cranch, 694, in the statement of facts in this case accompanying the opinion of

the court, this statement is to be found: "By another act of Assembly, passed in the year 1748, Revised Code of Virginia, vol. 1, chap. 4, page 10, certain grants from the Crown, made while the exact boundaries of the Northern Neck were doubtful, for lands which proved to be within those boundaries, as then recently settled and determined, were with the express consent of Lord Fairfax confirmed to the grantees, etc.

The territorial and jurisdictional rights of Virginia, having been so long held and possessed under the Howsing grant before the cession of Maryland to the United States, when taken in connection with the compact of 1785; the act of Congress of 1804, preserving the charter rights of Alexandria secured to it by the laws of Virginia; the provisos of the acts of cession of both States, the arbitration and award of 1878, approved by both States, and consented to by Congress; the silence of Maryland for one hundred and eighteen years before her cession; the silence of the United States from the date of recession in 1846 until 1912, and the acts of Congress of 1910 and 1911 and House document No. 1253, relating to the improvement of the Potomac River and harbor at Alexandria, all concur to show that the contemporaneous interpretation of the boundaries of the Calvert grant did not include within its boundaries the Howsing grant in the Potomac River, and that such interpretation has been acquiesced in by both Maryland and the United States.

Under the circumstances of this case and the undisputed facts offered in evidence, it is respectfully submitted that the presumptions of law are against the defendant in error, and the plea to the jurisdiction should have been resolved by the trial court in favor of the plaintiff in error.

At the time of the cession by Maryland to the United States, the predecessors in title of the plaintiff in error, had held under a claim of private ownership for 119 years, the islands and the soil under the waters of the creeks, bays, coves, and inlets within the lines of the Howsing grant, from Alexander's Island to Jones' Point, and it is submitted that after such a lapse of time, it will be presumed in law that the Crown grant of 1669 to Robert Howsing,

was made with the acquiescence of Lord Baltimore. And it will also be presumed from sixty-six years' silence of the United States since its recession of Virginia territory that it took under the Maryland cession, subject to the Howsing grant, and receded to Virginia all the territory within said grant as being a part of the territory ceded by Virginia in 1789 to the United States.

The presumption of validity attends every grant issued by persons authorized to make grants when there is nothing on its face impeaching its validity, especially where it has been acquiesced in by the sovereign for a long while.

Cyc., vol. 32, page 1202.

After the lapse of time between the date of the Howsing grant and the present, the presumption of law is in favor of the validity of that grant.

Fletcher *vs.* Fuller, 120 U. S., 534.
Cariflio *vs.* Insular Govt. Philippine Is., 212 U. S., 449.
Costas *vs.* Insular Govt. Philippine Is., 221 U. S., 623.
Cyc., Col. 32, 1202.
Matthews *vs.* Burton, 17th Grat., 312.

It is a rule of law that an original grant carries with it constructive or legal possession of the whole area covered by the grant.

Dawson *vs.* Watkins, 2nd Rovinson, Va., 259-268.
Green *vs.* Leiter, 8th Cranch, 229.
Green *vs.* Watkins, 7th Wheaton, 27.
Howdashall *vs.* Crenning, 103 Va., p. 30.

There is no evidence in the record, showing that either Maryland or the United States, ever made any claim to Alexander's Island or Pearson's Island, or any of the bays, creeks or inlets, included in the Howsing grant.

Referring to the domestic statutes of Virginia, relating to the corporate boundaries of Alexandria, we insist that all the numerous statutes following the Howsing grant of 1669, that began to be enacted with the year 1753, and

covered a period of one hundred and nineteen years before any cession to the United States of Virginia territory; and after the recession continued to be enacted and acted upon to the time of the institution of this suit; and that these Statutes coupled with the other facts in the record, show that Virginia by her declarations and Acts of her General Assembly, has consistently claimed and asserted title, possession, territorial sovereignty, dominion and jurisdiction over the lands and the waters and the soil under the waters of the Potomac river, from 1669 to the present time, within the lines of the Howsing grant, and that this claim has been open, notorious, continuous and adverse, and that there does not appear in the record anything to the contrary. While, on the other hand, the Appellee insists that the Act of Congress of 1874 is conclusive as a political declaration by Congress, of the boundaries of the District of Columbia, and that such declaration settles this case; yet, this is the only Act, so far as the record here shows, and is unaccompanied by any evidence in the record, showing one single claim of ownership in the land in dispute or of any part of Battery Cove, or one single instance of the exercise of territorial sovereignty and jurisdiction of any description whatsoever by the United States, in or over the said cove or the land in dispute, since 1846.

Fourth.

The compact of 1785, between Maryland and Virginia, and particularly paragraphs six and seven, and their construction and legal effect upon the territorial right, sovereignty and jurisdiction of Virginia, of the land in dispute; and upon the question of the boundary between said States; and particularly upon the question of the boundary between the District of Columbia and Alexandria, Virginia.

Among other provisions of the compact of 1785, the sixth and seventh paragraphs thereof provide:

6th. "The river Potomac shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United

States, and to all other persons in amity with the said States, trading to and from Virginia or Maryland."

7th. "The citizens of each State, respectively, shall have full property in the shores of Potomac River adjoining their lands, with all emoluments and advantages thereto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river, etc." (page 36, printed Record.)

The contention of the plaintiff in error here, in so far as it relates to this compact as one of the facts, among others, in the record supporting its claim, rests upon the parts of the sixth and seventh paragraphs thereof, as are above cited; while in the case of Evans *vs.* The United States, the provisions of paragraph 7, relating to fishing, constituted the vital question, which provisions are as follows:

"But the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both States; provided, that such common right be not exercised by the citizens of one State to the hindrance or disturbance of the fisheries on the shores of the other State, and that the citizens of neither State shall have a right to fish with nets or seines on the shores of the other. All laws and regulations which may be necessary for the preservation of fish or for the performance of quarantine in the river Potomac or for preserving or keeping open the channel and navigation thereof, or of the river Pocomoke, within the limits of Virginia, by preventing the throwing out of ballast or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both States" (p. 36 printed Record).

So far as anything in the record shows, Congress did not pass any act relating to fishing in the Potomac River until after the recession to Virginia or, in fact, until 188

The long boundary controversy between Virginia and Maryland was adjusted by commissioners appointed by the General Assemblies of the two States, at Mount Vernon Virginia, and their agreement was embodied in the compact of the 25th day of March, 1785 (paragraphs (*j*), (*k*), (pp. 35 to 40, inclusive, printed Record).

The attention of the court is particularly directed to that provision of section 7 of said compact, where it is expressly stipulated, "The citizens of each State, respectively, shall have full property in the shores of the Potomac River adjoining their land, with all emoluments and advantages thereto belonging, &c," which shows very clearly that the rights of Virginia in the shores of the Potomac granted to her and her citizens, was not merely rights appurtenant to the soil or highland abutting on the Potomac River, but instead, Maryland, by said compact, transferred to Virginia and her citizens, full property in the soil under the waters of the Potomac on the south shores of said river.

The validity of this compact is not affected by the failure of Congress to give consent thereto, as seems to have been the impression of the Court of Appeals of District of Columbia, in Evans *vs.* U. S., 31 D. C., Appeal Cases, 544; because under the Articles of Confederation such consent was not required. The said compact antedated and was a complete and binding agreement between Maryland and Virginia, and their respective territorial rights thereunder had become fixed, before the formation of the Federal Government and the adoption of the Federal Constitution. In Wharton *vs.* Wise, 153 United States, pages 155-166, the court in its opinion says:

> "The provisions of the compact were well designed to promote the peace, good neighborhood and welfare of both States, and facilitate intercourse between their citizens, and it was clearly within their province at the time to adopt them, if not restrained by the Articles of Confederation, then in existence and in which they had joined. They were then sovereign States, possessing, unless thus restrained, all the rights and powers of independent nations over the territory within their respective limits, and could exercise any control and dominion over their navigable waters, and made any regulations necessary for the protection of their navigation or to promote the commerce of their respective States.
>
> "The validity of the compact of 1785, has been questioned as in conflict with the second clause of

the 6th Article of the Confederation." * * * "In our judgment, the compact of 1785 was not prohibited by the Articles of Confederation. It was not a treaty, confederation or alliance, within the meaning of those terms, as there used, and remained as a subsisting, operative contract between them, in full force, when the Confederation went out of existence upon the adoption of the present Constitution of the United States, and it was not affected or set aside by the prohibitory clause of that instrument. Its prohibition extends only to future agreements or contracts, not against those already in existence, except as far as their stipulations might affect subjects placed under the control of Congress, such as commerce and the navigation of public waters, which is included under the power to regulate commerce. As stated by counsel, stipulations as to riparian rights of fishery, and as to jurisdiction in and over waters lying between the two States, remained as they had previously existed, neither suspended or impaired. We are, therefore, of the opinion that the compact continued in full force, after the adoption of the Constitution, except so far as inconsistent with its provisions, and such we understand has been the clear declaration of the two States, whenever they have been called upon to express their opinion on the subject, and such is the concession of counsel."

In Virginia *vs.* Tennessee, 148 U. S., 503-521, it was said:

"That an agreement or compact as to boundaries may be made between two States, and the requisite consent of Congress may be given to it subsequently, or may be implied from subsequent action of Congress itself toward the two States; and when such agreement or compact is thus made, and is thus consented to, it is valid, etc."

The compact of 1785, between Maryland and Virginia, confirmed this territorial ownership and jurisdiction of Vir-

ginia. The acts of cession of these States to the United States of territory for the District of Columbia did not extinguish, annul, or modify said compact in so far as it fixed the territorial boundaries and jurisdiction of Virginia at the date of her cession to the United States, for, in this respect, it remained unimpaired at the date of the recession by the United States to Virginia of the territory and jurisdiction by that State ceded except as changed by Act of Congress; and there is nothing in the record to show that the territorial boundaries and jurisdiction of Alexandria were at any time changed whilst that city and county formed a part of the District of Columbia.

The case of the Mayor, etc., of Georgetown *vs.* The Alexandria Canal Company, etc., 12th Peters, 96; 9th Law Edition 1014, was upon a bill in equity filed to enjoin the construction of the aqueduct of the Alexandria Canal across the Potomac River, on the ground that it obstructed the navigation of the river and constituted a nuisance. The bill was dismissed in the lower court, and the action of that court was affirmed by the Supreme Court of the United States, the latter court holding that if the construction of the aqueduct constituted a nuisance, it was a public nuisance and the subject of criminal jurisdiction; that a court of equity may take jurisdiction in cases of public nuisance, by information filed by the Attorney General, but if any particular individual shall have sustained special damages from the erection of the aqueduct, he might maintain a private action for such special damage, because to that extent he had suffered beyond his portion of injury in common with the community at large.

The court, in that case, by way of *obiter*, did refer to the compact between Virginia and Maryland as follows:

> "The compact made in the year 1785, between Virginia and Maryland, was made by the two States in their character as States. The citizens individually of both Commonwealths, were subject to all the obligations imposed, and entitled to all the benefits conferred by that compact. But the citizens as such, individually, were in no just sense, the parties to it; those parties were the two States of which they were

citizens. The same power which established it was competent either to annul or modify it. Virginia and Maryland, then, if they had retained the portions of territory, respectively belonging to them on the right and left banks of the Potomac, could have so far modified this compact as to agree to change any or all of its stipulations. They could, by their joint will, have made any improvements which they chose, either by canals along the margin of the river, or by bridges or aqueducts across it, or in any other manner whatsoever, when they ceded to Congress the portions of their territory embracing the Potomac River within their limits, whatsoever the Legislatures of Virginia and Maryland could have done by their joint will, after the cession, could be done by Congress, subject only to the limitations imposed by the act of cession."

But at the same time the court indicated, that said compact would remain unimpaired and in full force in all particulars not annulled or modified by Act of Congress, and made it clear and emphatic that the compact of 1785, was between the two States, and that the property rights and jurisdiction thereby vested in Virginia were so held for the use and benefit of her citizens, and that both States must agree before it should be in any particular abrogated; therefore, *a fortiori*, an Act of Congress was required to annul or modify the rights held by Virginia for the benefit of her citizens under said compact.

Referring to territorial ownership of the Potomac River to high-water mark on the Virginia side thereof, and how affected by the compact of 1785, we insist, that the sixth and seventh paragraphs of the compact of 1785, did cede substantial proprietary rights to the State of Virginia for the use and benefit of her citizens, viz: The right to the shores on the Virginia side of the Potomac, the right of access to the navigable part of the river, and to build bulkheads, wharves and piers into the river to the line of navigability, that her citizens might avail themselves of the natural uses of the river, subject to this restriction only; that

the exercise of such rights should not interfere with the navigation of the river. To the full enjoyment of the rights granted by the compact of 1785, under the cession by Maryland to Virginia, there was necessarily vested in the State of Virginia territorial right, sovereignty and jurisdiction, as an incident to the enjoyment of such rights, otherwise paragraphs six and seven of the compact were meaningless.

By this compact, in legal effect, Maryland ceded and relinquished to Virginia and her citizens full property in the shores of the Potomac River, and the right of making and carrying out wharves and other improvements, so as not to obstruct or injure navigation, and so conferred upon Virginia proprietary rights therein and territorial jurisdiction over the same.

The riparian right of making wharves and other improvements into the river is held to be property, subject only to the power of Congress under the commerce clause of the Constitution, and can then be interfered with only when necessary to promote navigation and commerce.

In Illinois Central R. R. *vs.* Illinois, reported 146 U. S., page 387, it was held:

> "The ownership and dominion and sovereignty over lands covered by the tide-waters, within the limits of the several States, belong to the respective States wtihin which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interests of the public in the waters, and subject, likewise, to the right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States."

In Yates *vs.* Milwaukee, 10 Wallace, 497-504, it was held:

> "The riparian proprietor is entitled, among other rights, to access to the navigable part of the water on the front of which lies his land, and for that pur-

pose to make a landing, wharf or pier for his own use, or for the use of the public, subject to such general rules and regulations as the Legislature may prescribe for the protection of the rights of the public."

In the same case the court also held that this riparian right was property and valuable, and, though it must be enjoyed in due subjection to the rights of the public, it could not be arbitrarily or capriciously impaired.

The right of a riparian owner is not a mere license, or privilege, but is property in the soil up to the line of navigation, though covered by water, for the wharf, pier, or bulkhead can only be built on the soil. It is not a mere license to pass over the water or a privilege to pass over the surface, but a property in the soil under the water, on which to fasten and build such structures, and for this purpose, and subject to the restriction that navigation shall not be obstructed, is as much property as the land above the margin of a navigable stream. And this is the rule at common law.

Norfolk City *vs.* Cook, 27th Grat., 68 Va., 530, 434, 435.

St. Paul & Pacific R. R. Co., etc., *vs.* Shurmeier, etc.; 7th Wallace, 74 U. S., 272-290.

Dutton *vs.* Strong, 1st Black, 66 U. S., 29.

Grover *vs.* Foster, 96 Va., 650.

Peck *vs.* Hampton, 115 Va., 855.

If the contentions of the defendant in error be correct that Maryland, after the compact of 1785, retained territorial right, sovereignty and jurisdiction to high-water mark on the Virginia side of the river, it would deprive the State of Virginia of the exercise of any territorial, sovereignty or jurisdiction, to regular the use and enjoyment of those rights by her citizens, and as well, to regulate the shipping within the harbor of Alexandria, and to make other proper regulations for the control of said harbor and would leave the regulation of the enjoyment and use of such rights, by Virginia and her citizens, in the State

of Maryland, and to that extent would nullify the compact and its very objects and purposes.

That the compact of 1785, was regarded by the contracting parties as a boundary question and agreement between them, is conclusively shown by the arbitration and compact between Virginia and Maryland, of 1878, and so regarded by Congress in its Act of 1879, because the Assemblies of both States, in 1878, ratified the finding and award of the arbitrators, fixing the boundary line therein set forth, as being the true boundary line between the said States agreeably to the compact of 1785, and Congress consented to this interpretation of the compact of 1785, by its Act of 1789.

That Maryland had the right to grant and did grant to Virginia, the fee in the soil under the River Potomac for the uses and purposes of extending wharves, etc., subject to the restrictions set forth in the sixth and seventh paragraphs of said compact, is sustained by the authorities cited, and as well as by the following cases:

Donnelly *vs.* U. S., 228 U. S., 243-278.
Madison *vs.* Mayer, 40th L. R. A., 645 and note.
Hoboken *vs.* Penn. R. R., 124 U. S., 656-694.
Potomac Steamboat Co. *vs.* Upper Potomac Steamboat Co., 109 U. S., 672-702.
St. Paul & Pac. R. R. *vs.* Shurmeier, 7th Wall. 272-290.

Lowndes v Huntington, 153 U.S. 1 — 32

In the case of the Potomac Steamboat Company *vs.* Upper Potomac Steamboat Company, above cited, Justice Matthews, in delivering the opinion of the court, speaking of the interest of Notley Young in the riparian rights fronting on Water Street, in Washington, uses this significant language: "This denies no right that can be claimed by virtue of the compact between Virginia and Maryland of 1785, or that secured to their citizens the privilege of making and carrying out wharves, as to the shores of the Potomac only so far as they were adjoining their lands, and such had always been the law in Maryland, notwithstanding the Act of 1745, Chapter 9, Section 10, which was held to

authorize the improvements therein spoken of, to be made by improvers in front of their own lots only. The full property in the shores of the Potomac River, spoken of in the compact, if it is not to be taken as a seizen of the land covered with water, but of right of occupation only, properly termed a franchise, must be appurtenant to the land, the conveyance of which carries it as an incident; otherwise, if it implies an ownership in the soil of the shore, between high and low water marks, as land, it could not pass as an appurtenant, by deed conveying adjoining land; for land cannot be appurtenant to land."

The dissenting opinion of the Chief Justice and Justices Miller and Gray, delivered by Justice Miller, contains these significant words: "When to this we add that no Act of Congress has ever asserted ownership of these wharves or landing places, or the rights of the riparian owner, while they have conferred on the authorities of the District the power of regulating wharves, private and public, we are forced to the conclusion, that these rights are left with the owner of the squares certified to Notley Young in the division of the United States."

The logic of the Appellee's contention here is, that the compact of 1785, vested no substantial or proprietary right either in the citizens of Virginia, as such, or in the State of Virginia, for the use of her citizens, and insists that, the present boundary line between the District of Columbia and Alexandria City, is the original line of the Calvert grant. If this contention be sustained, it would carry the District line to the original shore line on the Virginia side of the Potomac, to the high-water line indicated on Exhibit "1," "plan of the town of Alexandria," and would result not only in cutting off from Alexandria about one-fourth of its river front represented in Battery Cove, but would result also, in cutting said city entirely off from access to the Potomac River, and include within the lines of the District, territory now in the City of Alexandria, which if we include Battery Cove, constitutes in all about thirty city blocks of land east of the original high-water line of the Calvert grant, and would place that territory within the territorial sovereignty and jurisdiction of the District of

Columbia. As appears by the record here, the area above mentioned is the location of all of Alexandria's principal railroad terminals, industrial plants and wholesale houses, to serve which the Acts of Congress of 1910 and 1911 were intended, as shown by House Document No. 1253.

The United States did not acquire title to or jurisdiction over Battery Cove or to the filled area therein, because of the fact that in the improvement of the river and harbor at Alexandria, it made and reclaimed such land, for that fact alone vested no title to the fee in the United States, and its jurisdiction over the retaining wall and made land is only the jurisdiction vested in Congress by the commerce clause of the Federal Constitution for the preservation of the navigation of the river, but this power does not vest in the United States title to the fee.

In Illinois Central R. R. Co. *vs.* Illinois, 146 U. S., 387, it was held:

> "The construction of a pier or the extension of any land into navigable waters, for a railroad or other purpose, by one not the owner of lands on the shore, does not give the builder of such piers or extensions, whether an individual or corporation, any riparian rights."

A general rule is that where one invades another's land without legal right, and places structures thereon, the structures belong to the land owner. If the railway claims that its entry was made under circumstances which exempt from the operation of this rule, the burden is upon it to show it. *Prima facie*, a trespassing railway company occupies no higher position than any other class of trespassers. Va. & S. W. Ry. Co. *vs.* Nichols, 116 Va., 792, and Edmondson Island case, or Ferguson *vs.* Hamlin, 42 Fed. Rep., page 15. The compact of 1785, and other facts in this case clearly fix what were the lines of territorial boundary and jurisdiction in Virginia at the time of her cession to the United States of territory for the District of Columbia, and said compact was made a part of the statute laws of the respective States by the acts of their Legislatures ratifying

the same (paragraphs (*k*) and (*l*), pp. 35 to 40, inclusive, printed Record).

In Maryland *vs.* West Virginia, 217 U. S., 577, this court, in referring to said compact, said:

> "The compact of 1785 (see Code of Va., V. 1, title 3, ch. 3, par. 13, page 16), is set up in this case, and its binding force is preserved in the draft of the decrees submitted by counsel for both States. We agree with the arbitrators in the opinion above expressed, that the privileges therein reserved, respectively, to the citizens of the two States in the shores of the Potomac are inconsistent with the claim that the Maryland boundary on the south side of the Potomac River shall extend to high-water mark. There is no evidence that Maryland has claimed any right to make grants on that side of the river, and the privileges reserved to the citizens of the respective States, in the compact of 1785, and the subsequent ratifications, indicate the intention of each State to maintain riparian rights and privileges to its citizens on their own side of the river."

Fifth.

The acts of cession of Maryland of 1788-1791, and of Virginia of 1789, of territory for the seat of the Federal Government, and the construction and legal effect of the Act of Congress of 1846, receding the Virginia territory, upon the question of the boundary line between the District of Columbia and Alexandria, Virginia.

In the light of the facts referred to, and the cases cited, it cannot be questioned that the rights secured to Virginia thereby, became incorporated in the territorial boundaries and jurisdiction of Virginia, as the sole proprietary thereof. And unquestionably, they were the same rights and jurisdiction ceded by Virginia to the United States in 1789, as a part of the District of Columbia.

The United States took from Maryland under its cession for the District of Columbia, with these rights vested in

Virginia, because Maryland had parted with them by said compact, and when Virginia, in 1789, made her cession, she possessed these rights, property and jurisdiction, and ceded them to the United States, in full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside therein.

The act of retrocession to Virginia, in 1846, employed identically the same terms as were used in the act of cession by Virginia.

The facts offered in evidence by the defendant in error, (*l*), (*m*), (*n*), (*o*), (*p*), (*q*), (*r*), (*s*), (*t*), (*u*), (*v*), and (*w*), pp. 21 to 29, inclusive, printed Record, relating to the Aqueduct Bridge and the Long Bridge, do not materially affect this case. Independently of any cession by either Maryland or Virginia of territory for the District of Columbia, it was in the power of Congress, under the commerce clause of the Constitution, to authorize the construction of bridges over the Potomac River, it being a navigable stream, and to make such provisions and regulations for the government thereof as might be necessary, and Congress had also the power, at any time under the same provision of the Constitution, to compel their removal.

In so far as the record shows the cessions of the two States to the United States were not concurrent. Maryland ceded, in 1788, ten square miles, that is, all the territory allowed by the Federal Constitution for the seat of Federal Government, and the State of Virginia in 1789 did the same thing. Congress accepted the Maryland cession of 1788, but subsequently amended the act and accepted only a part of the cession of said State sufficient with part of the Virginia cession to make ten miles square. Maryland confirmed this change in 1791. The logic of the situation at that time was this, that when Maryland made her cession of 1788, she did not and could not cede to the United States, any part of the property rights and jurisdiction conferred upon Virginia by the compact of 1785, or by prescription, based upon adverse claim of possession, territorial ownership and jurisdiction by open, notorious, and continuous acts for a period of one hundred and nineteen years, or from the date of the Howsing grant, of 1669, which had

not, during all that period, been at any time contested by the Province of Maryland.

The cession of Maryland under its acts of 1788-1791, to the United States, of territory for the seat of government, passed subject to the true boundary line between Maryland and Virginia as established by prescriptive right and the compact between Maryland and Virginia of 1785, and the United States was bound to take notice of said compact and of the rights of Virginia thereunder; and took title only to such territory as Maryland was legally entitled to, irrespective of what may have been the original line on the Virginia side of the Potomac, of the grant to Cecilius Calvert.

The acts of the Assembly of Maryland of 1788 and 1791, ceding territory to the United States for the seat of the Federal Government, that is, the District of Columbia as now constituted, are to be found in paragraphs (*e*) and (*j*), pp. 15 and 18, printed Record. From these acts and the Act of Congress of 1790, accepting the Maryland cession of 1788 (paragraph (*f*), page 16, printed Record), it will be seen that the territory accepted was not to contain exceeding ten miles square, to be located as thereafter directed, on the Potomac River, at some place between the mouths of the Eastern Branch and Connogochegue, and that the original location of the District of Columbia was wholly in the State of Maryland. By the Act of Congress of 1791 (paragraph (*g*), page 16, printed Record), so much of the act of 1790 as required the whole territory to be located on the Potomac River above the mouth of the Eastern Branch was repealed, and the President authorized to make any part of the territory below said limits and above the mouth of Hunting Creek a part of said District, so as to include a convenient part of the Eastern Branch and of the lands lying on the lower side thereof, and the town of Alexandria; and that the territory so to be included should form a part of the District, not exceeding ten miles square, for the permanent seat of government; provided, that nothing in this last act contained should authorize the erection of public buildings otherwise than on the Maryland side of the river Poto-

mac, as required by the act of 1790. That the proclamations of the President defining the territory of the District of Columbia were made in pursuance of the acts of Congress of 1790, as amended in 1791 (paragraphs (*h*) and (*i*), pp. 16 to 18, inclusive, printed Record). The change made by the Act of Congress of 1791, repealing in part the act of 1790, as to the location of the seat of government, made necessary the Maryland act of December, 1791, to confirm the cession made under the Maryland act of 1788, so as to vest in the United States title to the territory included under the Maryland cession in the boundaries of the District of Columbia.

The first cession of Maryland territory, as already stated, was in 1788, and confirmed in 1791. At the time of the first act of cession by Maryland the compact between Maryland and Virginia was in existence and in full force and effect from and after March 28, 1785, or more than three years prior to the Maryland cession to the United States, which compact, as already stated, vested the shores of the Potomac River on the Virginia side and riparian rights appurtenant thereto, in the State of Virginia and her citizens, or, in other words vested the same in the State of Virginia, for the benefit of its citizens abutting upon the shores of the river. The true boundary line between Virginia and Maryland at the date of the compact, and long prior thereto, was determined by the agreement of arbitration and award approved and consented to by Congress, which award was distinctly stated to be agreeably to the compact of 1785. To say the least, the Act of Congress approving and consenting to this award was a recognition of the fact that the true boundary line between Virginia and Maryland, in the year 1785, was the line intended by the compact of 1785. There is nothing in the arbitration report and award, or in the agreement between the States, that justifies the inference, that any other line than the true boundary line as agreed upon between the two States in the compact of 1785 was ever considered or entertained, nor is there anything in the Act of Congress consenting thereto that shows Congress considered any other line. This being true, then at the time of the cession of

1788 by Maryland to the United States, said State did not own or possess and did not have the right to cede to the United States any territory on the Virginia side of the Potomac beyond a uniform line at low-water mark, or a line drawn from low-water mark at one headland to low-water mark at another headland, and hence Maryland, not possessing such rights or territory, they were not included in her cession to the United States.

It seems this court, in Maryland *vs.* West Virginia, made clear and indisputable, this contention on the part of the plaintiff in error.

It will not be seriously contended that after the compact of 1785 and before the cession by either State of territory for the District of Columbia, that Maryland could, by building a wall in front of Alexandria and filling in and making land of the space between such wall and the Virginia shore, have thus extended her territorial boundaries and jurisdiction, and ousted Virginia and her citizens of property, dominion and jurisdiction in the shores of the Potomac River and the riparian right to build wharves, piers and improvements into the river. It must be conceded that Maryland could not; and if Maryland could not, then by what right could her grantee do so and claim proprietary right and territorial jurisdiction of the same?

The United States took the place of Maryland only under her cession of 1788 (her act of 1791 was only confirmatory of the former). Virginia then possessed as a sovereign State, under the compact of 1785, all these rights and jurisdiction, and at that time they could only be acquired by the United States under cession from Virginia. If it be contended, however, that the cession of Maryland of 1788 was not complete or effective until her act of confirmation of 1791; then at that date, the United States had already acquired these proprietary rights and jurisdiction under the Virginia cession of 1789. Again, had the United States held to its original acceptance of the Maryland cession of 1788, and had taken ten miles square of the Maryland cession of 1788, for the seat of the Federal Government, from Maryland territory; then Virginia would have held her pro-

prietary right, territorial sovereignty and jurisdiction aforesaid under the compact of 1785, absolutely secure against not only Maryland, but also against the United States.

The territory ceded by Virginia under its act of 1789 to the United States for the seat of government extended to a uniform line at low-water mark, or, in other words, a line at low-water mark from one headland to low-water mark at another headland on the Virginia side of the Potomac River, said State having prior thereto acquired title to the same by prescription and by cession of Maryland under the compact of 1785; and that the same territory so ceded by Virginia to the United States, was by the Act of Congress of 1846, receded to Virginia.

From what has already been said it is clear that Virginia not only by virtue of the compact of 1785, but as well by prescriptive right, had proprietary and jurisdictional right to a uniform line at low-water mark from headland to headland, on the south bank of the river. This compact and prescriptive right are not only established by the arbitration and award, but is also confirmed by this court, in Maryland *vs.* West Virginia.

There can be no question that the Act of Congress of 1846, receding to Virginia the territory and jurisdiction by that State ceded to the United States, intended to include and did include all the territory and jurisdiction so ceded by Virginia, and to revest in that State all her property rights and jurisdiction of the shores of the Potomac to the true boundary line existing between Maryland and Virginia at the date of Virginia's cession (paragraph (*n*), pp. 41 to 43, inclusive, printed Record). The first section of this act provides that, "all that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, be and the same are hereby ceded and forever relinquished to the State of Virginia in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside therein." This recession was accepted by Virginia by act of her General Assembly of 1846 (paragraph (*c*), pp. 43 and 44, printed Record). The

election required under the act of recession and the proclamation of the President of the result are shown in paragraphs (*p*) and (*p*-1), pp. 44 and 45, printed Record, and the assumption of jurisdiction over and governmental control of the territory receded, appears in the act of Virginia of 1847 (paragraphs (*q*) and (*r*), pp. 45 to 54, inclusive, printed Record). It was undoubtedly the intention of Congress to restore Virginia to the same position in which she stood prior to her cession, and the act of recession effected that intent. This intention is made clear by reference to the acts both of cession and recession where it will be seen that the words or terms of cession and recession are identical. This being true, it necessarily follows that if the words employed in the act of cession were sufficient to transfer to the United States the proprietary rights and jurisdiction of Virginia in the subject matter here involved, then the use of the identical words of cession in the act of recession are sufficient to restore to Virginia such rights and jurisdiction.

McLaughlin *vs.* Bank of Potomac, 7th Grat., 68-71.

Whatever rights Virginia had, under the compact of 1785, were still held and enjoyed by that State at the date of cession by Maryland to the United States, in 1788, and necessarily such cession was made subject to the rights of Virginia under that compact, and what those rights were, are clearly expressed in the language of Justice Matthews, already cited. Whether those rights were vested in the State of Virginia, for the benefit of her citizens, or in her citizens individually or collectively owning lands along the shores of the Potomac, is immaterial, because in either event they were within the territorial dominion, sovereignty and jurisdiction of Virginia. Maryland's cession of 1788 did not and could not take them away, but they remained in Virginia until 1789, when that State made her cession to the United States, and by such cession either did, or did not, transfer them to the United States. At the time of Maryland's cession of 1788, the compact of 1785 was still in full force and effect, and its provisions have never been abrogated by joint agreement between the two States.

In the case of Evans *vs.* United States, 31 D. C. Appeals, 544, the Court of Appeals held that the rights vested in Virginia by the compact of 1785, constituted a mere easement, and was extinguished by Virginia's cession of territory for the seat of Federal Government, and that this easement was not revived, and did not pass back to Virginia, because the act of recession did not by express words revive the easement, and such was the contention of the defendant in error, in the Court of Appeals in this case.

If Virginia did not convey these rights to the United States, they were never vested in the United States, and therefore remained in Virginia, at the time of the act of recession. It will be noted, that the ceding clauses of both the act of cession and recession by and to Virginia, are substantially expressed in identical terms and language. If then, the terms of recession were not sufficient to re-vest in Virginia all the rights she ceded to the United States in 1789, then it follows, as a necessary sequence, that the language of the cession from Virginia to the United States was not sufficient to vest those rights in the United States.

Admit the compact of 1785, could have been revoked by the States, and that after the cession of both States to the United States, Congress could have done whatever the two States could have done, and thus have extinguished the rights secured by said compact to Virginia and her citizens. Yet the fact remains that Congress never passed any act upon that question between the date of cession and recession of Virginia territory. If Congress never passed any act abrogating the rights of Virginia or her citizens in the Potomac, under the compact of 1785, or any act claiming the riparian rights in the Potomac River secured by said compact to the citizens of Maryland and Virginia, respectively, then it necessarily follows that the rights of the citizens of the respective States in the shores were not extinguished, but still remained in them until extinguished by some Act of Congress. It was clearly the opinion of Justice Miller in the steamboat cases referred to and of his co-dissenting judges that an Act of Congress was necessary to that end, or if, as Justice Matthews held, those rights were by the

compact of 1785, made appurtenant to the Virginia territory, then by the Virginia cession, they passed to the United States as appurtenant to the territory ceded, and upon the recession, passed back to Virginia, as appurtenant to the territory receded.

The decision in the case of the Mayor of Georgetown, etc., *vs.* The Alexandria Canal Company, reported 12th Peters, shows that the views expressed by Justice Miller as to the necessity for an Act of Congress to change or alter those rights, were entertained by the court in the Canal Company case and distinctly asserted therein.

It is clear from the record in this case, that Congress never passed any act before the date of recession to Virginia in any way revoking, altering or impairing the rights conferred upon the citizens of the respective States by the compact of 1785, and in so far as Virginia and her citizens were concerned, those rights remained in full force and effect at the date of recession, and by that act passed back to Virginia as a part of the territorial sovereignty, jurisdiction and rights by her ceded.

The case of the Mayor, etc., of Georgetown *vs.* Alexandria Canal Company, clearly holds that the rights secured to the citizens of Virginia under the compact of 1785, were not secured to the citizens as such, individually, but that the compact was between the two States, and that the citizens of both States were entitled to all the benefits conferred by that compact. In our view of this case, when considered on the plea to the jurisdiction, it is immaterial whether these rights were granted to the citizens as such, or were granted to the State for the use and benefit of her citizens. In either event, there was vested in Virginia territorial dominion, sovereignty and jurisdiction of those rights. They were a part of the territorial dominion, sovereignty, rights and jurisdiction, ceded by Virginia to the United States in 1789, and were included in the act of recession to Virginia, in 1846. But if, as contended by the defendant in error, these rights constituted merely an easement in the Potomac River for either the citizens of Virginia as such, or in Virginia, for the use and benefit of her citizens, and could only pass back to Virginia, under the act of recession, by express terms therein, to revive the easement, then it

finds itself in a position wholly inconsistent and untenable, when you consider the language and terms of the acts of cession and recession. It will be noted, that the act of cession by Virginia, and the act of recession by the United States to Virginia, in the terms or language of the ceding part of both acts, are in substance identical. If then, the act of recession was insufficient to recede to Virginia the easement she enjoyed under the compact of 1785, then it necessarily follows, that the act of cession by Virginia to the United States, never transferred the easement to the United States, because such act of cession did not contain express terms therein to transfer the easement to the United States, hence, the easement still remained in Virginia after the cession of 1789. At the time of the recession whatever easement existed in Virginia, or her citizens had not been extinguished and could not be extinguished, except by joint agreement between the State of Maryland and the State of Virginia. That being true, it follows that Virginia, still possessing at that time of its cession the easement in the Potomac River, and not having parted with the same, was entitled after the recession to enter again into the enjoyment of it, and did so enter into enjoyment of it, and continued such enjoyment without question or protest, until the beginning of this suit.

Sixth.

The arbitration and award of 1878, between Maryland and Virginia, and the construction and legal effect of the Act of Congress of 1879, consenting thereto, upon the question of the boundary line between the District of Columbia, and Alexandria, Virginia.

After the compact of 1785 there arose a controversy between the two States as to the *true* boundary between them intended to be fixed by said compact. That controversy seems to have centered more particularly in the line on the Pocomoke River and the Eastern Shore of Virginia, and the line above the Great Falls of the Potomac to the headwaters thereof. As to the line of boundary between these two extremes, there appears to have been but little controversy, and, as will appear later in the presentation of this case, the

arbitrators had no difficulty as to the line of boundary along the Potomac River, but their difficulties centered more particularly upon the lines along the Pocomoke River and the Eastern Shore of Maryland, and that whilst the arbitrators all concurred in the line along the Potomac River, one of them dissented to the conclusion of the majority, as to the lines on the Pocomoke River and the Eastern Shore of Maryland.

This controversy as to the true line of boundary between said States, agreeably to said compact, was the subject of discussion and deliberation by several legislative commissions appointed by the respective States, prior to 1874, as shown by facts offered in evidence (paragraphs (*a*), (*b*), (*c*), (*e*), (*f*), (*g*), (*h*) and (*i*), pp. 79 to 84, inclusive, printed Record).

By the acts of Assembly of Virginia and Maryland of 1874 (paragraphs (*s*) and (*t*), pp. 54 to 56, inclusive, printed Record), the Hon. Jeremiah S. Black, of Pennsylvania, and the Hon. William A. Graham, of North Carolina, who were to be associated with a third person selected by them, were appointed arbitrators to settle and determine the *true* boundary line between said States. These acts were amended by both States in 1876 (paragraphs (*u*) and (*v*), pp. 56 to 59, inclusive, printed Record), it appearing that Hon. William A. Graham, of North Carolina, named under the act of 1874, had died, and that before his death the arbitrators appointed by the act of 1874 had selected as the third person Hon. Charles A. Jenkins, of Georgia. These amendments designated Jeremiah S. Black, of Pennsylvania, and the Hon. J. B. Beck, of Kentucky, with the Hon. Charles A. Jenkins, of Georgia, arbitrators, the duty to be performed and the powers conferred being identical with the original acts.

The attention of the court is especially directed to the fact that in the acts of 1874 and 1876 of the General Assemblies of the two States, it is specifically stated that the arbitrators "were to ascertain and determine the *true* line of boundary between Virginia and Maryland, and to make and deliver their award in writing, any two of them concurring."

There is no authority or direction in these acts to fix or establish a new line of boundary or a compromise line of boundary between the two States, but to ascertain and determine only the *true line of boundary* between them.

The arbitrators proceeded, under authority of these acts of the assemblies of the two States, and, having concluded their examination and deliberations, made report of their findings and award to said assemblies, all of which was approved and accepted by the act of Virginia of 1878, and by the act of Maryland of the same year (paragraphs (*w*), (*x*), (*y*), pp. 59 to 66, inclusive, printed Record).

The attention of the court is called to an extract from the report of the arbitrators (paragraph (*w*), pp. 59 to 62, inclusive, printed Record), as also, to the full text of the decision and award of the arbitrators, and the acts of the respective States accepting the same (paragraphs (*x*) and (*y*), pp. 62 to 66, inclusive, printed Record). By the Act of Congress of 1879, the report and award of the arbitrators and the boundary line established by them between the two States were approved and consented to by Congress (paragraph (*z*), p. 66, printed Record). In this act there is a full recital of the decision and award of the arbitrators, in the same words and figures as set forth in the Virginia act, and the Act of Congress gave consent and approval not only to the decision and award of the arbitrators, but in express terms to each and every article and part thereof. The decision and award of the arbitrators, its acceptance by the States, and the consent and approval thereof by the Act of Congress, speaks not of a new line or of a compromise line, but of the *true* boundary line between these States, *agreeably to the compact of* 1785, and therefore, fixes the line of boundary between the two States as of 1785, and not as of the time when the decision and award was made, and it was so accepted by the States, and consented to and approved by Congress. This is shown by the broad language embodied in the Act of Congress in giving its consent by these significant words: "That the consent of the Congress of the United States is hereby given to said agreement or award, and to each and every

part and particle thereof." This position is confirmed by reference to the third and fourth paragraphs of the decision and award (page 64, printed Record), which are in the following words: "Third. The low-water mark on the Potomac to which Virginia has a right in the soil, is to be measured by the same rule, that is to say, from low-water mark at one headland to low-water mark at another, without following indentations, bays, creeks, inlets, or affluent rivers." "Fourth. Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of 1785."

So then, this arbitration settled the fact that the *true* boundary line between Virginia and Maryland in 1785, was as defined by the third and fourth paragraphs of the decision and award of arbitration.

In the lower court the counsel for the defendant in error, in discussing the report and award of the arbitrators, argued that the headland theory of boundary on navigable waters, had never been adopted as a principle in this country. It is sufficient to say, however, that when Congress gave its consent and approval to the arbitration, it recognized the headland theory in that particular matter.

In the case of Morris *vs.* United States, as already stated, the effect of this award was not considered or passed upon. It was considered, however, in the case of Evans *vs.* The United States, and the court there intimated that neither the United States nor the District of Columbia were bound by the result of the arbitration referred to.

But since the decisions in Morris *vs.* United States, and in Evans *vs.* United States, this court has spoken upon this important question, and has clearly given approval to the report and award of said arbitrators, and has confirmed their decision as to the true boundary line between Virginia and Maryland in 1785.

The State of West Virginia, which was separated from the State of Virginia during the war between the States,

had a controversy as to the *true* boundary line between West Virginia and Maryland. As a result of this controversy, the State of Maryland, on the 12th of October, 1891, filed its bill against the State of West Virginia, in the Supreme Court of the United States, invoking the original jurisdiction conferred upon that court by the Constitution for the settlement of controversies between States. The failure to settle the location of the true boundary line in dispute with West Virginia, which had succeeded within its territory to the rights and title of Virginia, was alleged in the bill of complaint, and that the State of West Virginia was wrongfully in possession of and exercising jurisdiction over a large part of the territory rightfully belonging to Maryland, and claim was made by the latter State that in so far as its line bordered upon the Potomac River, its territory extended to high-water mark on the Virginia side thereof. The State of West Virginia not being a party to the arbitration aforementioned, seems, at the first hearing before the Supreme Court, to have ignored it, and sets up by way of cross-bill, a counter-claim of territory, including the Potomac River to high-water mark on the Maryland side thereof. The record in that case is a very large and voluminous one, in which there is introduced a vast amount of documentary and oral evidence.

In the case of Evans *vs.* United States, the court in delivering its opinion seemed to lay stress, first, upon the fact that the United States was not a party to the agreement between Virginia and Maryland, to submit the question of the true boundary line to arbitration, and hence not bound by the decision and award of the said arbitrators; second, that the proviso of the Act of Congress approving and consenting to said award and the boundary thereby established, was intended as a saving clause by the United States for the protection of the territorial rights and jurisdiction of the District of Columbia, and of its rights in the Potomac River to high-water mark on the Virginia side thereof; said proviso is in the words following: "That nothing therein contained shall be construed to impair or in any

manner affect any *right of jurisdiction* of the United States in and over the islands and waters *which form the subject of said agreement and award.*"

As to the first proposition, it is urged that the agreement to submit to arbitration by the States and the result of such arbitration, did not become complete until the United States became a party thereto, and approved and consented to both the agreement to arbitrate and the result of such arbitration.

By the Act of Congress, approving and consenting to the agreement and award, the United States became a party thereto as fully and as effectually as if it had been a party at the very inception of the agreement to submit to arbitration.

In Wharton *vs.* Wise, 153 U. S., 155-172-173, the court, in referring to the compact between Maryland and Virginia, and the approval and consent of Congress in the premise, said:

> "In the acts of both States, passed in 1874, designating arbitrators to ascertain and fix the boundary between them, the validity of the compact was confirmed in the declaration that 'neither of the said States and the citizens thereof, shall by the decision of said arbitrators be deprived of any of the rights and privileges enumerated and set forth in the compact between them, entered into the year 1785, but that the same shall remain to and be enjoyed by the States and citizens thereof forever.'"
>
> * * * "The States of Maryland and Virginia not only consented to the appointment of the arbitrators on the conditions mentioned, but their award was approved by both States and by an Act of Congress. That approval covered all the conditions and stipulations upon which the award was made, and recites the compact of 1785, the rights and privileges of which were to remain and be enjoyed by the States and the citizens thereof forever, thus consented to by Congress, free from constitutional objection, if any, that were valid, that

had previously existed. The Act of Congress of March 3, 1879, recited: 'That arbitrators duly appointed, on the part of the States of Virginia and Maryland, for the purpose of ascertaining and fixing the boundary between them, did proceed to examine into and ascertain the *true* line of said boundary, and had made their award, which was set forth, and that award had been ratified and confirmed by the legislatures of the States, respectively, and then enacted that the consent of Congress was given to the agreement or award and to each and every part and article thereof. That consent, taken in connection with the conditions upon which the award was authorized, operated as an approval of the original compact and its continuance in force under the sanction of Congress. The consent of Congress to any agreement or compact between two or more States is sufficiently indicated when not necessary to be made in advance, by the adoption or approval of proceedings taken under it.'" Citing Green *vs.* Biddle, 8th Wheaton, 1, 85, 86, 87.

In the case of Virginia *vs.* Tennessee, 148 U. S., pages 503-521, this court held that the consent to any compact or agreement may be subsequently given, and that knowledge by Congress of the boundaries of a State and its political subdivisions may be reasonably presumed.

This being the law of the case, it therefore must be presumed that when Congress accepted the cession of Virginia of 1789, of territory for the District of Columbia, it had knowledge of the compact of 1785, and was cognizant of the territorial rights and jurisdiction of Virginia, under and by virtue of the sixth and seventh paragraphs thereof, and took the cession of Virginia subject to the same.

In the second place, the reservation of Congress in the act consenting to the arbitration and award, of jurisdiction over the waters and islands which form the subject of said agreement and award, did not, and was not intended to relate to the territorial rights, property or jurisdiction

of the District of Columbia, but referred only to the powers of Congress over the waters and islands, *which formed the subject of the said agreement or award*, under the commerce clause of the Federal Constitution. By its very terms, the proviso relates only to the subject-matter of the arbitration and award, and that subject-matter included the waters and islands of both the Potomac and Pocomoke rivers.

The question here is not one of jurisdiction only, but also a question of territorial ownership and dominion of the land in dispute, and upon the establishment of both territorial ownership and dominion, in law and in fact, the jurisdiction of the courts of the District of Columbia depends, for without this there is no such jurisdiction.

The reservation in the Act of Congress does not retain to the United States any territorial or property rights in the subject-matter involved in this case. The reservation is of *jurisdiction only* over the islands and waters that form the subject of said arbitration and award, viz. the Potomac and Pocomoke rivers from their source to the Chesapeake Bay. If the reservation by Congress had been intended to relate to territorial sovereignty and jurisdiction, surely, in such an important matter as territorial rights and jurisdiction relating to the District of Columbia, Congress would have used apt words to make clear and definite that intent, and would not have employed terms so general and comprehensive.

Congress, by the Act of 1879, did consent that the boundary line fixed by the arbitration and award of 1878, was the true boundary line between the two States agreeably to the compact of 1785, and in so doing, conceded that the boundary line so fixed, was the true boundary line between Virginia and Maryland, in 1785, and before any cession by either State of territory for the District of Columbia,. The United States, by virtue of said Act of Congress, became a party to the arbitration and award, by adoption and ratification, and was as much bound by it as if it had become a party at the inception of that proceeding by the States.

Wharton *vs.* Wise, 153 U. S., 155-156.

Virginia *vs.* Tennessee, 148 U. S., 503-521.

In the case of Maryland *vs.* West Virginia, 217 U. S., the court said, in referring to the compact of 1785: "The privileges therein reserved to the citizens of the two States on the shores of the Potomac, are inconsistent with the claim that the Maryland boundary shall extend to high water mark."

Referring to the headland theory of boundary lines, in navigable rivers, we beg to say: That whatever may have been the theory before that date in other jurisdictions, the fact remains in this case, that the headland rule adopted in the arbitration and award of 1878, was accepted and ratified by both of the States interested and consented to by Congress, and we submit, that these acts settle that question so far as this case is concerned.

The artificial headlands at Alexandria, do not materially affect the headland boundary established by said compact, because the original headlands can be and are located on Exhibit "3," according to Engineer Gordon, by measurements shown on the Exhibit; which is accompanied by his statement to the effect, that a line drawn from low-water mark at Jones' Point to low-water mark at Point Lumley, as it originally stood, will include the retaining wall extending from Jones' Point to the shipyard of the Appellant, and all the made land in Battery Cove, including the land in dispute.

The facts in the record show, beyond question, that there were three distinct headlands projected into the Potomac river in front of Alexandria, in 1748, when the plan of the town was first laid off, and they were then known as Point West, Point Lumley and Jones' Point, and have ever since been known by those names. See pages 8, 9, 10 Printed Record. The original shore lines of the Potomac at Alexandria, in 1748, extended to Water Street, now Lee Street, in said City, in fact to the west side of said Street, between Point Lumley and Point West, and that from the original shore line of this cove, it will appear by actual measurements on Exhibit "3," of the length of squares and width of streets, that Point Lumley projected into the river east of the west side of Lee Street, between six and seven hundrd feet and that the width of

Union Street was fifty feet. It is also clearly shown by the record, that between Point Lumley and Jones' Point, the shore line of that cove, at the foot of Franklin Street, did not extend east of the west side of Union Street, and that all of the land east of the west side of Union Street, including the street, was made prior to 1785, and from these facts also it appears, by the same measurements above referred to, that Point Lumley, as it related to the last mentioned cove, in 1748, projected over three hundred feet into the Potomac river east of the west side of Union Street. The contention that these headlands are of insufficient import to have a bearing on this case, is not sustained by the record.

Upon the law and facts of this case, it is respectfully submitted, that the errors assigned are well founded, and that the judgment of the Court of Appeals of the District of Columbia, should be reversed.

Respectfully submitted,

JAMES R. CATON,

Counsel for Plaintiff in Error.

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In the Supreme Court of the United States

OCTOBER TERM, 1920.

MARINE RAILWAY AND COAL CO. (INC.), plaintiff in error, *v.* UNITED STATES OF AMERICA, DEFENDANT in error.	No. 326.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case turns upon the location of the boundary between Virginia and the District of Columbia on the Potomac River.

The parcel for which this action of ejectment was brought is a fraction of a larger area made, in the course of a river and harbor improvement, upon the submerged soil of the Potomac River. This suit, which is in the nature of a test case, will be decisive as well in respect of other more extensive areas now being raised in pursuance of a comprehensive plan of river improvement.

All of this land is being raised upon the submerged soil of the Potomac riverward of the high-water line boundary established by the charter of Maryland.

The Government's view is that the river boundary between Virginia and the District runs, as provided in that charter, with the actual high-water line on the western bank of the river. The defendant's contention is that it runs in straight lines from headland to headland at low-water mark. The former boundary puts the whole of the reclaimed area in the District. The straight-line boundary, if drawn between the low-water marks on Jones Point and Point Lumley (Duke Street) *as the latter now exists as a result of filling*, would put all the reclaimed area in Virginia except a small corner near Jones Point. (Exhibit B.)

THE FACTS.

It is not denied that the area in dispute lies within the original boundary lines of the District and eastward of the line of mean high water on the right bank of the river as it existed at the date of the establishment of the District. (R. 4.)

Until the river and harbor improvement was made, the whole area remained submerged soil constituting the bed and foreshore of the river within the ebb and flow of the tide. (R. 5.)

The river and harbor act of June 25, 1910 (36 Stat. c. 382, p. 630), made an appropriation for "Improving Potomac River at Alexandria, Virginia, in accordance with the report submitted in House Document Numbered Twelve hundred and fifty-three." (R. 173–182.)

In the course of improving the river by deepening its channel in accordance with the project adopted by that act, the Secretary of War began on Sep-

tember 6, 1910, to build a riprap sea wall on the river bed along the edge of the channel and below mean low-water mark. It ran from a point near the foot of Franklin Street to Jones Point, thus extending across the indentation called Battery Cove. The purpose of the wall was to confine and protect the navigable channel by forming a revetment against the swells of boats, wave action, and freshets. (R. 6.) The material dredged in deepening the channel was deposited on the flat behind the wall and between it and mean high-water mark on the Virginia shore. This flat had an average depth at mean low water of 1½ feet. (R. 5; Ex. B.) There were no structures of any kind extending from the upland into this area. (R. 6.) The owners of the upland had notice of the proposed work and consented to it upon the understanding that all rights of the respective parties were reserved. (R. 151–152.)

The construction of the sea wall began on September 6, 1910. By December 17, 1910, it had been completed to the extent that ordinary access to navigation from the defendant's upland had been cut off from so much of the front thereof as lies southward from the north end of the wall. (R. 6.) The work of depositing material as it was dredged from the channel began on March 4, 1911, and was completed on December 29, 1912.

It is to be noted that (1) none of the land filled in extends above the actual mean high-water line as it existed on the date on which the work on the wall was begun. (2) The greater part of it on

the contrary lies *below and riverward of the actual mean low-water line* as it then existed. (3) A tiny strip lies between the high and low water lines of that date. (R. 6, Ex. B.)

Only if the boundary is drawn in a straight line from a point at least as far north as Point Lumley at Duke Street *as it now exists as the result of filling* (Rec. 6) can any considerable part of the area be thrown into Virginia.

A fence, inclosing the reclaimed area, constructed by the Government along and following the actual mean high-water line as it existed immediately prior to the beginning of the work, was destroyed by the company, claiming, as owner of the adjacent upland in Virginia, to own the filled land also. (R. pp. 6–7.) Possession having thus been taken of the *locus*, the United States brought this action of ejectment. (R. 1.)

PROCEEDINGS.

The defendant company first interposed a plea to the jurisdiction upon the ground that the land claimed was not within the District of Columbia. (R. 2.) The plea was found against it. (R. 109.) That issue is the subject matter of the first bill of exceptions. (R. 110–111.)

It then pleaded the general issue. (R. 111.) At the trial, the effort was to show that, granting the *locus* to be within the limits and jurisdiction of the District, the fee, nevertheless, belonged to the owner of the Virginia upland. This issue also was found for the Government. (R. 153.) It is the subject

matter of the second bill of exceptions. (R. 155–168.) [By some error this bill is inserted in the record twice. R. 183.]

Plaintiff had judgment for the whole of the land described in the declaration. (R. 154.) The company appealed to the Court of Appeals.

That court affirmed the judgment. (R. 203.) It rejected *in toto* the claim for a boundary running in straight lines across the ordinary indentations of the river shore. As between the natural high-water line and the natural low-water line, the court did not find it necessary to make a choice, for the tiny fraction of the area thereby affected was practically negligible and the defendant, claiming the whole, had not taken any separate defense in respect of it. (R. 203.) The company thereupon applied for a writ of error, which was allowed by the court below. (R. 209.)

STIPULATIONS.

In a case of this kind, the evidence must be largely of an historical character and almost exclusively documentary. Counsel for both parties felt that the court's labors would be shortened and facilitated by reducing the material to the form of stipulations, from which irrelevant and merely formal parts of documents might be omitted, and in which (although *not* constituting an agreed statement of facts) all matters *in pais* should be briefly stated according to what would be the effect of the witnesses' testimony. The result will be found in the stipulations of January 17, 1916 (R. 3–91); April 21, 1916 (R. 91–106); and November 22, 1916 (R. 106–109). The whole of

these are incorporated by reference in the bill of exceptions on the question of jurisdiction. (R. 110.)

A similar effort was made on the trial of the general issue. So much of the matter in the previous stipulations as was relevant on that issue was offered by reference. The numerous instruments relied on as constituting defendant's chain of title to the adjacent upland, and offered to show title to the reclaimed area, were abstracted and incorporated in a third stipulation filed on May 23, 1919. (R. 112–152.) The second bill of exceptions indicates each offer from this stipulation and the ruling thereon. (R. 156.)

MAPS AND PLATS.

With the stipulation of May 23, 1919, were offered some 16 maps, drawings, and blue prints. Their evidential significance can best be appreciated in immediate connection with the discussion of the particular points in controversy. A formal description of them seems unnecessary.

ARGUMENT.

The propositions on which the Goverment's title rests.

Our title to the land in dispute is but the necessary consequence of certain propositions already established by controlling adjudications. They may be restated thus:

I. In the District of Columbia the United States as successor, by cession from the State of Maryland, to the lord proprietary of Maryland has not only the dominion but the absolute property of the soil of the

Potomac River to the ordinary high-water mark on the southern or Virginia bank.

Morris v. *United States*, 174 U. S. 196, 227.
Cropley v. *Dist. of Col.*, 23 App. D. C. 232, 244, 245.
Evans v. *D. C.*, 31 App. D. C. 844.
Hess v. *Muir*, 65 Md. 586, 606.
West Md. R. v. *Baltimore*, 106 Md. 561, 573.
Lord Proprietary v. *Jennings*, 1 H. & McH. 92.
Smith and Purviance v. *State*, 2 H. & McH. 244.

Conversely, the company, as owner of land in Virginia bounded by the Potomac had no property whatever in the soil underneath the river. Its tenement terminated with the territorial boundary line on which it abutted.

II. In the District of Columbia the United States is complete territorial sovereign for every purpose of government, national and local, and there is no separation in the exercise of this sovereignty between local and national powers.

Kendall v. *United States*, 12 Pet. 524, 619.
Capital Traction Co. v. *Hof*. 174 U. S. 1, 5.

III. This single, plenary, and exclusive sovereignty of the United States in the District of Columbia embraces an absolute power over commerce not dependent upon the authority of the commerce clause of the Constitution and (if such be conceivable) more fundamental and complete than the interstate power conferred by that clause.

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Gibbons v. *Ogden*, 1 Wheat. 1, 97.

El Paso Ry., etc., v. *Guitierrez*, 215 U. S. 87, 95.

IV. In the exercise of its power over commerce, even when dependent upon the interstate-commerce clause, the Federal Government has the unrestricted right to do whatever, in its judgment, seems best for the protection and improvement of navigation.

Union Bridge Co. v. *United States*, 204 U. S. 388.

South Carolina v. *Georgia*, 93 U. S. 4, 11, 13.

V. It thus had the right, in the case of the Potomac, to adopt, as a proper means for the improvement of navigation, the deepening of the channel by building a sea wall along its edge, dredging out the bottom of the navigable part of the stream, and depositing the dredged material on the shoal behind the wall. All ownership of land along the river was held in necessary subordination to this right to improve its navigation and subject to the obligation to suffer the consequences of the improvement. Any damage that might thereby result to the riparian owner was but the incidental consequence of the exercise of a lawful governmental power for the public good.

Gibson v. *United States*, 166 U. S. 269, 276.

Scranton v. *Wheeler*, 179 U. S. 141, 164, 165.

United States v. *Chandler-Dunbar Co.*, 229 U. S. 53, 63, 73.

Greenleaf-Johnson L. Co. v. *Garrison*, 237 U. S. 251, 261.

Willink v. *United States*, 240 U. S. 572, 580.

VI. Being in this District the sole, complete, and indivisible political sovereign, the United States is necessarily the only guardian and conservator of the general public interest, public trust, or public purpose (whatever term may be preferred), for which it is vested with the absolute property of the beds and shores of this great public navigable river, and is consequently the sole judge of the uses which shall be made of the same.

Shively v. *Bowlby*, 152 U. S. 1, 52, 57–58.

Home, etc., v. *Commonwealth*, 202 Mass. 422, 429.

Sage v. *Mayor of New York*, 154 N. Y. 161.

Wooley v. *Campbell*, 37 N. J. L., 163, 165, 166.

Com. v. *Roxbury*, 9 Gray, 451, 483, 485.

VII. Such a submerged bed, thus owned in absolute property by the United States and raised above the ordinary water level in the course of a lawful public improvement, constitutes the *locus in quo*. It is, therefore, the property of the United States—

> "* * * because the soil under the water must needs be of the same propriety as it is when it is covered with water. If the soil of the sea, while it is covered with water, be the king's, it can not become the subject's because the water hath left it."

Hale, *De Jure Maris*, c. 6.

Shively v. *Bowlby*, 152 U. S. 1, 48.

Austin v. *Rutland R. R. Co.*, 45 Vt. 215, 244.

Hoboken v. *Penn. R. R.*, 124 U. S. 656, 690.

The ground of defendant's claim.

The conclusion in favor of the Government's title defendant sought to overturn by showing that, before the river improvement was begun, it, and not the United States, was the owner in fee of this part of the river bed. This it endeavored to do in two ways:

I. *First by showing that this portion of the river bed was not within the District of Columbia.* A plea to the jurisdiction was interposed. Manifestly this was the main part of defendant's case. For if the area in dispute lay within the limits of the District, the United States obviously owned it before reclamation as part of the river bed and must continue to own it after it had been raised, as an incident of the lawful improvement of the navigation.

All the historical and other material incorporated by defendant in the stipulations of January 17, 1916, April 21, 1916, and November 22, 1916, was accordingly offered for the purpose of showing that a new boundary line had been substituted for the original charter boundary along the high-water line on the westerly bank of the Potomac. By reason of the facts adduced, it was contended, so much of the river, and consequently of the soil under it, as lay inside of

straight lines drawn from headland to headland at low-water mark, had passed over into Virginia. Defendant mistakenly says (Br. Plf. in Er., p. 36) that the report and award of the Virginia-Maryland arbitrators (R. 59) and similar evidence was excluded on the trial of this issue. On the contrary, all of the matter put into the record by defendant up to that time was offered and admitted (R. 110). The court held that, notwithstanding the evidence, the District boundary, as matter of law, was still the high-water line (R. 111).

II. *Defendant's second effort was to show a title to the locus as soil in the District.* The general issue was pleaded. Conceding that the river bed to high-water mark was still part of the District, as it had been part of Maryland, defendant now said that Maryland, by means of the compact of 1785, had granted the Virginia owners of upland abutting on the river such rights of property in the soil below high-water mark as would, upon the same principle invoked by the Government, make them the owners of any land which might be raised upon such submerged soil. Here, as before, defendant's case was bottomed on the compact—but with a difference. It was now claimed to operate as a grant from the State of Maryland to the individual owners of land in Virginia, conferring upon them perpetual estates in Maryland soil, and not as a treaty establishing a new boundary line between the contracting States.

The answer to both contentions is to be found in a clear understanding of the meaning and effect of the

compact of 1785 in its character as an interstate compact or treaty. For this reason discussion of the questions raised on the jurisdiction issue will, in large measure, anticipate, and perhaps abridge, the discussion of the contentions urged on the general issue.

Part One.

THE QUESTION OF JURISDICTION.

Territorial boundary a question of law.

The issue raised by defendant's plea to the jurisdiction is whether the *locus in quo* lies within the District of Columbia. As there is no dispute as to the actual location of the land, the issue turns upon the question whether the boundary line is the actual high-water mark of the Potomac, or whether, as defendant claims, it is a series of lines drawn across indentations from headland to headland at low-water mark.

The matter to be decided, therefore, is a pure question of law. (*State* v. *Wagner*, 61 Me. 178, 184.) Defendant's plea was not a traverse of any fact.

The answer to the question, moreover, is conclusively deemed to be already within the knowledge of the court. For this court, sitting on appeal, will "take judicial notice of the territorial extent of the jurisdiction exercised by the Government whose laws" it administers. No evidence, therefore, is necessary to show what that boundary is; nor would the court's judicial knowledge of it be affected even by an admission to the contrary in the pleadings.

Jones v. *United States*, 137 U. S. 202, 214.
United States v. *Reynes*, 9 How. 127, 147, 148.
Kennett v. *Chambers*, 14 How. 38, 50–51.
Hoyt v. *Russell*, 117 U. S. 401, 404.
State v. *Wagner*, 61 Me. 178, 184.
Harrold et al. v. *Arrington*, 64 Tex. 233.
State v. *Dunwell*, 3 R. I. 127, 128.

While many sources of information on the subject are indicated in the record, it must, of course, be understood that this material was intended simply to refresh the judicial recollection and facilitate investigation of the charters, statutes, and public acts by which the boundary was established. (*State* v. *Wagner*, 61 Me. 178, 186.) All elements necessary to a decision, whether offered in evidence or not, will be taken notice of by this court, which must know, as matter of law, the territorial limits of its own jurisdiction.

The question no longer open.

For the purpose of this case, all controversy as to the territorial limits of the District of Columbia would seem to be foreclosed by political action consistent only with the view that the territory of the District extends over the entire river to the line of high water on the Virginia shore. (R. S. D. C. sec. 1.)

Alex. Canal Co. v. *District of Columbia*, 1 Mack (D. C.), 257.
Evans v. *United States*, 31 App. 544.
Jefferson v. *Dist. of Columbia*, 40 App. 381, 383.
Smoot v. *District of Columbia*, 23 App. 266–271.

Thus it is difficult to see how the question raised by the plea can be regarded as still open in an action brought in a court of this District. Whatever jurisdiction this court might have to pass upon the question in an original proceeding for the purpose between the United States and the State of Virginia (*United States* v. *Texas*, 143 U. S. 612), it must be regarded, we submit, as the settled public law of this District that its southern boundary is the high-water mark.

In the first section of the Revised Statutes of the United States relating to the District of Columbia (approved June 22, 1874) Congress has defined the District of Columbia to be "that portion of the territory of the United States ceded by the State of Maryland for the permanent seat of government of the United States, including the River Potomac in its course through the District and the islands therein." Defendant tries to argue that the word "course" has here a limited significance and does not include the whole river. But obviously the word has the same meaning it had in the Act of 1801 when (the District including both sides and the river being placed in both counties) the same description was used for the whole of the river. (R. 19.)

So long ago as 1881, in *Alexandria Canal Co.* v. *District of Columbia* (1 Mack. 257), the general term of the District Supreme Court held that the District authorities had power to make a tax assessment upon the structure of the Aqueduct Bridge up to the line of high water on the opposite shore.

In *Smoot* v. *District of Columbia* (23 App. D. C. 266), it was held with regard to the licensing of a

steam engineer on a dredge in the Potomac opposite Georgetown that the police power exercised in respect of the District of Columbia extends to the *entire* river as it runs through the District. Congress has legislated upon that basis; and the record shows that the municipal corporation, as the executive agency for the enforcement of the police power, has claimed and exercised, and now claims and exercises, jurisdiction to the high-water mark on the Virginia side. (R. 86–91.) In *Evans* v. *United States* (31 App. D. C. 544), Evans was charged with fishing with a dip net in the waters of the Potomac River within the District of Columbia, contrary to section 896 of the Code. Evans, standing on a rock above high-water mark on the Virginia shore, took fish by dipping his net into the water below high-water mark (p. 546). The issue of high or low water boundary line was thus directly presented for decision, for it is obvious that no one State has power to make it a crime to take fish in a place not within its own territorial limits. In a carefully considered opinion, in which the principal points here made by defendant were discussed and disposed of, the court of appeals sustained the conviction upon the express ground that the territory now embraced within the District is coextensive with that included in the cession from Maryland, which *unquestionably owned the soil to the high-water mark of the Potomac River* on the southern or Virginia shore. Congress has never relinquished the title or control thus acquired (p. 554). Actual authority has been regularly exercised in accordance with that view.

These facts, we submit, constitute, so far as suits pending here are concerned, a political determination of territorial limits which, of necessity, is binding upon the courts of the same jurisdiction.

> This exception assumes to bring in question the eastern boundary line of this State. Where that line is, *de jure*, is a political question, with which the courts of the State will not intermeddle. Sufficient for them is it that the State has always claimed jurisdiction up to and "along the easterly side or bank" of the Seekonk River, and exercised it in fact. The courts are bound to take cognizance of the boundaries in fact claimed by the State.
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> *State* v. *Dunwell*, 3 R. I. 127, 128.
> *State* v. *Wagner*, 61 Me. 178, 184.
> *Heirs of Cameron* v. *Texas*, 95 Tex. 545, 551.
> *Harrold* v. *Arrington*, 64 Tex. 233, 238.
> *King* v. *Am. Transport Co.*, 1 Flip. 1, 8.
> *Thorson et al.* v. *Peterson et al.*, 9 Fed. 517, 519.
> *Foster* v. *Neilson*, 2 Pet. 253, 307, 309.
> *United States* v. *Arredondo*, 6 Pet. 691, 711.
> *Garcia* v. *Lee*, 12 Pet. 511, 520.

No jurisdiction to entertain writ of error.

Jurisdiction of this writ of error must arise, if at all, under section 250 of the Judicial Code. Of the seventeen assignments of error (R. 205–8), but four can conceivably be relied on for the purpose. The fifth, eighth, and tenth assignments are supposed to bring the case within the sixth clause, the fourteenth within the first clause, of that section.

The fifth assignment is grounded upon the construction of section 1 of the "Revised Statutes of

the United States relating to the District of Columbia," approved June 22, 1874. The suggestion is that it makes a case "in which the construction of any law of the United States is drawn in question by the defendant." But those words in clause 6 of section 250, as construed by this court, embrace only laws of the United States of general operation and do not include laws local in their application to the District of Columbia.

American Sec. & T. Co. v. *Dist. of Col.*, 224 U. S. 491, 494.

McGowan v. *Parish*, 228 U. S. 312, 317.

Washington & Mt. Vernon Ry. v. *Downey*, 236 U. S. 190, 193.

The eighth and tenth assignments relate to the construction of the act of Congress approved March 3, 1879 (20 Stat. 481), giving the consent of Congress to the agreement and award between Virginia and Maryland respecting the boundary between those States. That act does not touch the Virginia-District of Columbia boundary, nor is it otherwise involved in this controversy. The argument defendant endeavors to deduce from that act is so manifestly unsound that it can not serve as the basis for this writ of error. (See *infra*, *Fifth Point*.)

The fourteenth assignment of error is in respect of the holding that the parcel of land is within the jurisdiction of the Supreme Court of the District of Columbia and not within the jurisdiction of the courts of Virginia.

The first clause of section 250, it is true, permits a review of "cases in which the jurisdiction of the trial

court is in issue." It would seem that the intent of that clause is not as wide as the words. Otherwise, a dispute whether the amount in controversy placed a case in the Municipal or in the Supreme Court of the District of Columbia would give an appeal to this court as of right. Cf. *Smithers* v. *Smith*, 204 U. S., 632, 641.

The exact scope of this provision as applied to courts of the District of Columbia is a perplexing question. In this regard, the words of section 250 are the same as those of section 238 authorizing direct appeals to this court from the District courts. *McGowan* v. *Parish*, 237 U. S., 285, 292. The underlying purpose of both sections would seem to be much the same, namely, to permit a review here of the trial court's jurisdiction as a Federal court. Section 61 of the District Code declares that the Supreme Court of the District of Columbia shall possess the same powers and exercise the same jurisdiction as the district courts of the United States. *Benson* v. *Henkel*, 198 U. S., 1, 14. But it is also a court of general common law and equity jurisdiction (*Hartranft* v. *Mullowny*, 247 U. S., 295, 299), and unless the words be given a restricted meaning, confining them to contentions "intrinsically and essentially Federal" (*Male* v. *Atchison, T. & S. F. Ry.*, 240 U. S., 97, 101), every plea to its jurisdiction, on whatever ground, must bring the case here. Moreover, section 250 (which, like sec. 238, is clearly modeled throughout upon the common prototype, sec. 5, act Mar. 3, 1891, c. 517), provides in terms

almost identical with those of section 238 that "when any such case is not otherwise reviewable in said supreme court, then the question of jurisdiction alone shall be certified to the said supreme court for decision." There is no such certificate in the record. Yet, if the writ is to be supported on the point made in the fourteenth assignment, the action on the jurisdiction plea is the only subject for review. And since that issue did not involve the jurisdiction of the court as a Federal court, but its fundamental power as a local court of general jurisdiction to entertain any action touching the *locus*, it would seem that this writ can not be supported at all.

The interesting questions raised by plaintiff in error (defendant below), though doubtless similar to those which might be raised in an original suit between the United States and Virginia, involve the effect of colonial patents, conveyances between private parties, statutes of local application and a compact between two sovereign States, and draw in question the effect, *but not the validity*, of an authority exercised by the Secretary of War. Not one of these questions, however, falls within any of the six classes of cases in which this court is required to review the judgments and decrees of the Court of Appeals of the District of Columbia.

It would seem to follow that this writ of error should be dismissed for want of jurisdiction.

If the question of boundary is to be regarded as open in this case, then we submit that a re-examination of the subject will demonstrate that the original charter boundary has never been altered.

FIRST POINT.

At the date of the cession of the District, Maryland unquestionably owned, and therefore the United States necessarily acquired, the soil to the high-water mark of the Potomac River on the south or Virginia shore.

This is the necessary consequence of propositions established by controlling adjudications.

1. The charter of the Province of Maryland, granted in 1632 to Lord Baltimore by Charles I, embraced the Potomac River and the soil under it and the islands therein to high-water mark on the southern or Virginia bank.

> *Morris* v. *United States*, 174 U. S. 196.
>
> *Alex. Canal Co.* v. *Dist. of Columbia*, 1 Mack. 257.

2. The title thus granted to Baltimore was not divested by any valid proceeding prior to the American Revolution. Nor was it affected by the subsequent grants to Lord Hopton and Lord Culpeper of territory in Virginia between the Potomac and Rappahannock Rivers, "together with the said rivers themselves, and all islands within the uttermost banks thereof." (*Morris* v. *United States*, 174 U. S. 196, 225.)

This was the central point presented in the *Morris* case by the claim of the Marshall heirs and explicitly decided.

Defendant seeks to detract from the controlling force of that decision by saying that the Marshall claim there rejected, was based upon the Culpeper

grant of 1688, whereas its claim here is not founded on that grant at all, but on a grant made to one Howsing in 1669, nineteen years before. (Br. P. in E. pp. 42, 44, 45, 53.) It is, therefore, urged that the present case is distinguishable both from the Morris case and from *Evans* v. *United States* (34 App. D. C. 544).

This argument involves a mistake of fact as well as a fallacy of inference, and utterly overlooks the *ratio decidendi* of both cases.

(i) The Culpeper grant there dealt with was not a new grant, but a grant by way of confirmation. (4 Hen. St. Va. c. xviii, pp. 514, 519.) The grant of the Northern Neck of Virginia (commonly known as the Culpeper grant and afterwards vested in Fairfax) was originally made to Hopton and others by Charles II "on the eighteenth day of September in the first year of his reign." (R. 80.) That is to say, September 18, 1649. It thus antedated the Howsing grant by 20 years. It had moreover been confirmed to the successors of the first patentees by Charles II "on the eighth day of May in the one and twentieth year of his reign"—that is to say, May 8, 1669, not 1670 as defendant erroneously says. This is also prior to the date of the Howsing grant. All the right, title, and interest of the patentees having vested in Culpeper, the grant was again confirmed by James II "on the seventh and twentieth day of September in the fourth year of his reign." (1688.)

It is plain that when this court held that the Maryland proprietary's title to the bed of the entire

river was not affected by "the subsequent grant to Lord Culpeper," it decided that his title was not affected by the grants of which the Culpeper patent was but a second confirmation. And these grants, though subsequent to the Maryland charter and inoperative against it, were both prior to the Howsing patent and cut it out. Not having been made by the governor and council before September 20, 13 Car. II (1661), the Howsing grant was not within the saving clause of the St. Alban's confirmation. (4 Hen. Stat. Va., p. 518.) Whatever force it has as a grant is due to its having been confirmed in 1748 by consent of Fairfax, the final holder of the Culpeper grant, upon condition of attornment to him. (R. 34.)

(ii) But defendant's argument simply confuses the point of the Morris decision. The point is that inasmuch as the Maryland charter of 1632 was never invalidated by any proceeding prior to the Revolution, "the territory and title thus granted to Lord Baltimore, his heirs and assigns" could not be affected by a *subsequent grant*, notwithstanding the latter purported in terms to convey the river. The governor's grant to Howsing of 6,000 acres within the Northern Neck, was a junior grant just as much as the three royal grants of 1649, 1669 and 1688 of the whole of the Northern Neck, culminating in the Fairfax confirmation, *They were all equally subsequent grants.*

In saying "that the boundaries of the Culpeper grant were unascertained" until a later date (Br. Pl. in E. p. 57) counsel fails to note that the reference

is only to the northern and western boundaries above tide water.

As for the colonial charters of 1606, 1609, 1611, and 1612 (R. 31–33), it is elementary historical knowledge that these charters were forfeited upon *quo warranto* on June 16, 1624. In truth, defendant's insistent characterization of the Howsing conveyance of 1669 as a "royal" grant is predicated solely on the fact that upon the forfeiture of these charters the King had resumed the government of Virginia.

3. It follows, as a necessary consequence, that, as against all persons claiming under the colony of Virginia or under Hopton, Culpeper, or Fairfax, the lord proprietary of Maryland had ownership, dominion and jurisdiction over the waters and soil of the Potomac River to high-water mark on the southern or Virginia shore.

4. By the Revolution all rights of sovereignty and of property, including the waters and soil of the Potomac, conferred upon Baltimore by the charter of June 20, 1632, devolved upon and became vested in the people of Maryland and the Government ordained by them. (*Morris* v. *United States*, 174 U. S. 196, 227.)

5. By the acts of cession the United States succeeded to all rights of property, dominion, and jurisdiction in and over the Potomac River and its shores, theretofore vested in the State of Maryland.

Morris v. *United States*, 174 U. S. 196, 234.
Dist. of Col. v. *Cropley*, 23 D. C. 232–245.

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Act of Maryland, 1788, c. 46; act of Congress, July 16, 1790, c. 28 (1 Stat. 130), and March 3, 1791, c. 17 (1 Stat. 214–215); act of Maryland, December 19, 1791, c. 45.

We are thus led inevitably to the conclusion that—

6. The property, dominion, and jurisdiction in and over the waters and soil of the Potomac thus acquired by the United States from Maryland had, therefore, precisely the same boundary as the property, dominion, and jurisdiction vested in Maryland upon the Revolution, namely, the high-water mark on the Virginia shore.

From this conclusion defendant seeks escape by five main avenues:

(1) By the Howsing grant.

(2) By the Compact of 1785.

(3) By the Maryland-Virginia arbitration agreement or award of 1878.

(4) By the Act of 1879, giving the consent of Congress to said agreement or award.

(5) By certain domestic statutes of Virginia, supposed to have extended Alexandria over part of the river.

(6) By sundry facts relied on as indicating a tacit substitution of a new and different boundary extending "from low-water mark at one headland to low-water mark at another."

SECOND POINT.

The Howsing grant was without effect upon the territorial boundary between the two provinces, and neither conveyed nor purported to convey any estate in the bed and soil of the Potomac River.

There is no evidence whatever to support the claim that the area in dispute "is within the lines of a grant . . . to Howsing." But it would not help defendant if it were.

For transporting 120 persons into the colony, Robert Howsing, on October 21, 1669, obtained from Sir William Berkeley, governor of Virginia, a patent for—

> Six thousand acres of land, scituate, lying and being upon the freshes of Potomack River on the west side thereof . . . beginning at a red oake standing by a small branch or a run of water neare opposite to a small island commonly called and known by the name of My Lord's Island extending down the Potomack River various courses 3152 po., makeing a S. Wtly. line to a pokecory standing at the north side of the creek . . . named Indian Cabin Creek . . . from the said pokecory NW. and by W. up the said creeke and main branch 520 po. from thence N. 1940 po. finally E. 720 po. to the red oake begun at, including sev'al small creekes or iniets for the said quantity. (R. 67.)

This grant is 37 years subsequent to the royal charter of June 20, 1632, by which the province of Maryland was permanently separated from Virginia.

> The said province, and the freeholders or inhabitants of the said colony or country, shall

> not henceforth be held or imputed a member or part of the colony of Virginia. (R. 12.)

That charter also defined the boundaries of the new Province and granted to Baltimore, his heirs and assigns, the entire tract including the rivers and waters to the farther bank of the Potomac. At the date of the Howsing patent, therefore, the dominion and property of all the soil of the Potomac River was already vested in the Maryland proprietary. (R. 162.)

II. A CONVEYANCE CONFINED TO LIMITS OF VIRGINIA.

Defendant's counsel insists on characterizing the Howsing grant as a royal grant—a grant from the Crown. If so, the more strictly must it be construed against the grantee. (*Hungerford's case*, 1 Leon. 301; *R.* v. *Capper*, 5 Price, 217.) In theory of law the title to all *ungranted* land in America was in the Crown. But the King had already granted the Potomac and the soil under it to the Maryland proprietary. It is obvious that this grant by Berkeley "under the seal of this colony" (R. 34) was but a grant in course made in his capacity as colonial governor by virtue of authority to grant land *within that colony* to any person who might, by complying with certain conditions, entitle himself to an allotment, "as due by importation of servants." (See 1 Hen. St. Va., p. 276, 444.) It was made under general law for the disposition of unappropriated lands, not for the disposition of soil under public tidal waters.

(*Home* v. *Richards*, 4 Call (Va.) 441, 446, 447; cf. *Mann* v. *Tacoma L. Co.*, 153 U. S. 273, 284.) It is not to be distinguished from other conveyances by which "many adventurers and planters had taken up great quantities of land." (R. 34.) Nor is it different from similar grants by the land office of the Maryland proprietary, the King's tenant and feudatory lord, as well as political head, of that Province. (*Penn* v. *Baltimore*, *Cas. temp.* Hardwicke, 332.) The patent, then, whether royal or not, is but a conveyance of a specified quantity of land in that colony. The governor of Virginia was manifestly without power by such a grant to enlarge the political boundaries of the colony as delimited by the prior Maryland charter. Nor could he convey to a private subject soil which the King's grant under his own seal had already vested in the Maryland proprietary. Since the Howsing patent could operate only in Virginia, it must be construed as having reference *to the territorial limits of that colony.*

III. DOES NOT EXTEND TO SOIL UNDER A PUBLIC RIVER.

It seems quite clear, moreover, that the terms of the Howsing patent would not under any circumstances carry any portion of the bed and soil of the Potomac River. The tract is described as "scituate, lying, and being upon the freshes of the Potomac River on the west side thereof," and its easterly boundary is expressed as "extending down the Potomac River various courses." According to the accepted meaning of such a description, the land

conveyed is bounded by and runs with the natural water line. (*Shively* v. *Bowlby*, 152 U. S. 1, 13; *People* v. *Page*, 39 App. Div. N. Y. 110, 114, 117; *Rogers* v. *Mabe*, 15 N. C. 180, 194.) A grant in these terms, though made by the King himself, would not pass the bed and soil of the river in front of the tract in defiance of the established rule of law that a grant of lands bordering on public, navigable river, within the ebb and flow of the tide, stops at the water's edge and does not include the soil under the water, wherein the King's proprietary title is held for the benefit of the public.

Defendant seems to find some opposition between this view and the familiar rule that, in the disposition of public lands, meander lines are generally run not as boundaries of the tract but to ascertain the quantity of the upland to be charged for. But how would that bring the Howsing grant out to straight lines in the river? The whole point of the rule is that the watercourse is the boundary and not the meander lines. "The waters themselves constitute the real boundary." (*Hardin* v. *Jordan*, 140 U. S. 371, 380.) That being the case, whether the soil under the waters passes with the upland is another and different question, to be answered according to the applicable local law. By the common law as applied in both Maryland and Virginia, the passing of the soil depends upon the character of the stream; that is to say, whether it is navigable or nonnavigable. If it be, as here, a tidal, navigable river, the grant stops at the water's edge. If nonnavigable, the

grant extends to the center thread of the stream. In either case the natural call, the stream, is the boundary. But in the second case the boundary runs in the middle instead of on the edge, not because the courses by which the stream was sought to be meandered might actually extend across some part of the water, but because of the nonpublic character of the stream.

We think with defendant that the "various courses" of the Howsing grant were run not as boundaries but as meanders. But that does not help defendant's straight line theory. Under the rule defendant invokes, the grant either stops at the water's edge as we say, or else it runs to the middle thread of the Potomac.

And it is the public nature of the river that determines whether it is the one or the other. Manifestly Howsing could not take the unpatentable bed of the river simply because imaginary straight lines corresponding to the courses might extend across some of the water.

The invocation of this rule, moreover, places defendant in a dilemma: (*a*) Either the "various courses" of the Howsing grant were run as, and constitute, the definite boundaries of the tract, or (*b*) they are mere meander lines and not boundaries at all. In the former case, the grant is limited by the courses and distances specified, the water course is not the boundary at all, and no one claiming under Howsing is a true riparian owner. (*Producers' Oil Co.* v. *Hanzen*, 238 U. S. 335, 336, 339; *Niles* v.

Cedar Point Club, 175 U. S. 300, 306.) In the latter case, the river itself is the boundary, and since it is a navigable river within the ebb and flow of the tide, the grant inevitably stops at the line of the stream. (*Hardin* v. *Jordan*, 140 U. S. 371, 380.)

Nor is this result affected by the words "including several small creeks or inlets for the said quantity," so much stressed by defendant. These words would not take in a part of the public river simply because there was an indentation in the shore line. Nor was their purpose such as defendant attributes to them. They mean only that the 6,000 acres Howsing was getting "as due by importation of" 120 persons had been measured *approximately* in lines "extending down the river various courses 3,152 poles" without making allowance for small areas of water in the form of creek and inlet, which courses like these might include because of the impracticability of following up all of the meanders of the bank. The statement that the water areas were included "*for the said quantity*" was inserted to forestall any future claim on Howsing's part to have the total acreage recomputed by leaving out the useless water on a more careful resurvey, in order to take in some contiguous vacancy to make up the full quantity to which his transportation had entitled him.

Applications for resurveys for that purpose were by no means infrequent in those days of grants in large blocks by rough and approximate surveys. A recital that the area of creeks and inlets was know-

ingly counted in to make up the quantity would foreclose such an application. The very fact that the creeks and inlets are described as *small* indicates also that they were interior streams and waters within the tract, and *not portions of the river in front of it.* The reference is to things like Four-Mile Run *in Virginia*, not to the Potomac River *in Maryland.* This adjective further emphasizes the intent that the inclusion of such small, and therefore relatively negligible, waters intersecting the tract should not thereafter be alleged as a diminution of the full 6,000 acres Howsing was entitled to.

The grant is not a grant of lands under tidal waters. There are no apt words for the purpose. How then can it be taken to convey the soil of the whole westerly stretch of the river inside a straight line from Alexander's Island to the north point of Hunting Creek? Yet that is what defendant says in order to lay a foundation for claiming the soil here in suit. (Br. Pl.-in-E., pp. 8, 50.) How can "various" courses "extending down" the river be converted into one straight line across the front of the tract?

The defendant argues that the Howsing grant must be taken to include the soil under Battery Cove, because the sketch maps of the grant (Ex. 9, Ex. 16) indicate that it took in Holmes (now Alexander's Island, Pases Island and Piper's Island. The fast land in these so-called islands is one thing. The submerged bed of the river is another. But it is

plain, moreover, not only from later detailed surveys, but from the sketch maps themselves, that these islands were substantially part of the Virginia mainland. They were separated from it, as Alexander's Island is to-day, only by narrow slashes or guts not constituting any part of the Potomac. All of the true islands such as Analostan Island, though lying nearer the Virginia than the Maryland shore, were recognized as within the province of Maryland and held by patents from the Maryland land office. (R. 12–13.)

For 150 years at least, the so-called Piper's Island (Jones Point) and the area marked Pases Island have been so united with the mainland that the circumstance that they could ever have been described as islands is something known only to antiquarians. In fact, both sketches of the Howsing grant show Piper's Island already joined by fast land of some kind to the Virginia shore. (Ex. 9, Ex. 16.) The topographical relation of these islands is not affected by counsel's boyhood recollection that Alexander's Island was reached by a bridge. It needs only an inspection of the Chart of the Head of Navigation of the Potomac River, compiled in 1838 from the surveys of Lieut. Col. Kearney, Maj. Turnbull, U. S. T. E., Wm. C. Fairfax, and M. C. Ewing (Exh. 6), to show that Pases Island was indistinguishable from the Virginia mainland, and that Alexander's Island was not and had never been separated from it by any such body of water as would warrant its being

treated as an island in the Potomac. It is evident from this chart, as well as from all other maps grounded on genuine surveys, that the water, which the rough sketches of the Howsing grant show between these so-called islands and the mainland, was no part of the stream of the Potomac, but a slash or gut largely fed by an interior creek or run. Note, too, that these bodies of land were not considered islands in 1801, when Congress made the County of Washington include "all that part of the district on the east side of the Potomac together *with the islands therein.*" (R. 19.)

The Howsing grant was unquestionably intended to carry the land "upon the freshes of Potomack on the west side thereof" from the run opposite My Lord's (Analostan) Island to the north side of Indian Cabin (Hunting) Creek. Alexander's, Pases and Piper's Islands were sufficiently identified with the Virginia mainland to be treated as being "on the west side of" the Potomac. The grant did not carry them because they were embraced within any cove or indentation. For such was not the case. It carried them because they were fast land "on the west side" of Potomac.

IV. SOIL NOT GRANTABLE FOR PRIVATE APPROPRIATION.

Should we concede that the Howsing patent is a grant from the Crown, it still remains true that the bed and soil of a public navigable tidal river, like the Potomac, would not pass by the words in which it

is expressed, for it is a fixed principle of the common law that—

> "general words in the King's grant never extend to a grant of things which belong to the King by virtue of his prerogative, for such ought to be expressly mentioned (2 Roll. 195 E)." (Comyn, Dig. Grant, G. 7; *Martin* v. *Waddell*, 16 Pet. 367, 411.)

It is fundamental that the King's ownership of the bed and shores of a public navigable river, within the ebb and flow of the tide, belongs to him by virtue of his prerogative, and is held by him in his public and legal character in trust for the nation and subject to public uses. It would take much more than inclusion to make up a stated quantity of fast land to divest the King's prerogative title to this part of the public domain. Not only is this true but an express grant of the bed of a public waterway to a private subject, *without the consent of the legislature*, would be void as inconsistent with the public uses to which the legal title itself is subject.

> *Martin* v. *Waddell*, 16 Pet. 367, 410.
> *R.* v. *Parmenter*, 10 Price, 378, 409.
> *Wooley* v. *Campbell*, 37 N. J. L. 163, 165.
> *Home* v. *Richards*, 4 Call (Va.) 441, 446, 447.

As said by this court, speaking of the great proprietaries of the American colonies, the crown title to the soil under navigable waters is held in trust for the common use of the whole community, "and not as private property to be parceled out and sold for his individual personal emolument." (*Morris* v. *United States*, 174 U. S. 196, 227.)

It would indeed be startling to discover that while the king's own patent, though containing apt words to convey soil under rivers, bays, and arms of the sea, did not vest the proprietaries of Maryland, Pennsylvania, and the Jerseys with private property in the soil under navigable waters, yet an ordinary grant by a colonial governor of Virginia could invest a common person with private property in the bed of a great highway like the Potomac by merely including several small creeks and inlets to make up the quantity of land stated in the grant.

V. MARYLAND PROPRIETARY NOT BOUND TO NOTICE DOMESTIC CONVEYANCES IN VIRGINIA.

Defendant's idea seems to be that failure on the part of the Maryland proprietary to notice and, in some way, to oppose the "royal grant" to Howsing, must imply acquiescence in an alteration of his charter boundary and a divesting of his dominion, property, and jurisdiction in the Potomac River.

Whether the Howsing grant be royal or otherwise, it was but a conveyance of land, such as "the king, as well as a common person, may make of lands vested in him at the time of the grant." (Comyn, Dig., Grant, G. 5.) Manifestly, this instrument was in no sense a grant of territorial jurisdiction or political powers or seigniorial franchises and privileges. It has nothing in common, therefore, with the charter of Maryland, whereby that Province was erected into a palatinate, and its grantee invested with *jura regalia* as exercised in the county palatine of Dur-

ham, that is to say, "as fully as the king himself, from whom all justice, honor, dignity, franchises, and privileges were at first derived. (4 Inst. 204, Dav. 60.)" Comyn, Dig., Franchise, D. 1. Howsing's grant of 50 acres a head for transporting 120 persons does not stand on a footing with any of those great instruments of which this court has said:

> The various charters granted by different monarchs of the Stuart dynasty for large tracts of territory on the Atlantic coast conveyed to the grantees both the territory described and the powers of government, *including the property and the dominion of lands under tide waters.* (*Morris* v. *United States*, 174 U. S. 196, 226.)

Why, then, should the lord proprietary of Maryland be expected to notice Howsing's grant any more than numberless other local grants in Virginia? How, in fact, would he have become aware of it? Such a contention seems peculiarly extravagant when we remember that this court has held that the Maryland lord proprietary, though vested with title in express terms, was himself without power to make a sale or execute a patent granting the bed or shores of any tide water in his Province. (174 U. S. pp. 229, 238-239.) Why should he conceive that the governor of Virginia could do in Maryland what he could not do himself?

But if we are to assume the lord proprietary's attention being drawn to the matter at all, we find that he must have known also that subsequent to his own charter, the Crown had made a grant of *the*

whole of the Northern Neck of Virginia, by the Hopton patent of September 18, 1649 (1 Car. 2), confirmed to Hopton's successors, Henry, Earl of St. Albans, and others, on May 8, 1669. (21 Car. 2.) He would be aware, then, that the grant to Howsing was absolutely void even as a grant of land in Virginia. And so in fact it remained until 1748, when, by the consent of the successor of Hopton, these grants under the seal of the colony "within the limits and boundaries of the letters patent granted to the ancestors of said Lord Fairfax" were confirmed upon the condition that the same "be held, nevertheless, of the said Lord Fairfax." (R. 34.)

It is idle, therefore, to conceive the Maryland proprietary as bound to meddle with the Howsing grant. His business was with the proprietor of the Northern Neck. It was these two great patentees who stood over against each other. And, as this court has decided, although the grant of the Northern Neck was twice confirmed, and afterwards solemnly adjudged valid by the King in council, and embraced the Potomac River in terms, it did not in anywise affect the Maryland proprietary's dominion, property, and jurisdiction therein to the high-water line on the Virginia shore. (174 U. S., p. 225.)

It may be questioned whether in any event these patentees could alter the bounds of the provinces without the consent of the Crown. But surely the limit of reasonable suggestion is that the lord proprietary might have been bound to notice an actual and open occupation of defined bodies of land within

the boundary lines of Maryland. For such an actual occupation, if continued unopposed for a long period of time, might ultimately raise an implication of acquiescence in an altered boundary as to the land so occupied. But, in point of fact, there *never was any actual occupation under the Howsing patent, or otherwise under authority of Virginia, of that part of the bed of the Potomac River on which the land here in controversy was afterwards built up.*

Down to September 6, 1919, the whole of the area was—

> submerged land covered by the waters of the Potomac River within the natural ebb and flow of the tide, and within mean high-water line of the right or western bank of said river, and the soil within said area was submerged soil constituting a portion of the bed and soil of said river. (R. 5.)

Nor were there "structures of any kind extending from the defendant's upland beyond the mean high-water mark and within the area inclosed and reclaimed. (R. 6.) Throughout its history, until made use of in order to deepen the river channel, the area which defendant calls Battery Cove remained an open and obvious part of the public stream. The possession of the soil underlying the water necessarily followed the legal seisin. So long as it remained part of the bed of the river, it was not susceptible of possession adverse to the true owners, who, in the capacity of political sovereign, were successively seized of the bed and soil of this great public water-

way. It is, therefore, entirely inaccurate to say that defendant and its predecessors had possession of this land under "the grant to Howsing from the date of said grant in 1669 until 1912, when plaintiff undertook to oust the defendant."

VI. NO CONSTRUCTIVE POSSESSION OF THE RIVER UNDER THE HOWSING GRANT.

Here we may notice defendant's contention that, although the Howsing grant could not pass the river bed, possession of the upland might constitute a *constructive adverse possession* under color of title out to the supposed limits of the patent. The answers to this argument are many.

(i) In the first place, there is nothing to show that any one of the three "straight line" boundaries to which defendant resorts to take in this area corresponds with the calls of the Howsing grant.

The three lines suggested are: (1) A line drawn from Jones Point to Alexanders Island. (2) A line drawn from Jones Point to the northern extremity of Alexandria near Montgomery Street. (3) A line from Jones Point to Point Lumley (Duke Street). These lines all run in different directions, and they vary in distance as well as in course. The first is about 6 miles long and slices off the western part of the river. The second takes in a considerable section opposite the whole front of the city of Alexandria. The third is less than half a mile long and takes in a much smaller portion of the river.

Manifestly, all of these divergent lines can not correspond with the calls of the Howsing grant. Nor is there any evidence that any of them does so. Moreover, the Howsing grant did not run in any such straight line. It ran by "various courses," whose combined distance *aggregated* 3,152 poles, making down the river in a southwesterly direction. (R. 67.) Whether those courses were 5 or 25, no one can say. All we know is that to measure up 6,000 acres they included several small creeks and inlets. But there is nothing to show what creeks or inlets are required to make up that quantity, and besides Battery Cove is no inlet. Thus, there is absolutely no basis for inferring any identity, or indeed any relation whatever, between the Howsing grant and any one of these proposed boundary lines. And consequently no basis for inferring a "constructive" possession under that grant to any one of the lines.

(ii) But the doctrine itself has no possible application.

The theory of *constructive* adverse possession under color of title—a doctrine neither universal nor unqualified—has no application to land covered by water and incapable of possession in the ordinary sense. (*Hoye* v. *Swann*, 5 Md. 237, 249; *Casey* v. *Inloes*, 1 Gill (Md.), 497, 500.

Its utter inapplicability to such a case as this is demonstrated by many of its recognized qualifications.

(*a*) Being grounded on an inference arising from the common habits of men with respect to cultiva-

tion, the doctrine applies only when the land actually occupied and the land claimed are *both* of a kind put to the purposes of ordinary cultivation and use. (*Chandler* v. *Spear*, 22 Vt. 388, 404–406; *Paine* v. *Hutchins*, 49 Vt. 314, 318; *Bailey* v. *Carleton*, 12 N. H. 9.) Thus it is inapplicable to tracts which are *not* "of proper size to be *managed and used in a body* according to the customs and business of the locality." (*Thompson* v. *Barhans*, 61 N. Y. 52, 68, 69.) In such cases the notion of a constructive adverse possession is excluded because the occupancy of one tract is not of a nature to put the real owner upon notice that he has been ousted from the other, and that the right of entry, inherent in his legal title, is being barred. It can not operate as a disseizin. (*Bradtl* v. *Sharkey*, 58 Oreg. 153, 156, 158.) "It is a rule of evidence, not of property." (*Thompson* v. *Barhans*, 61 N. Y. 52, 68.)

(*b*) Again, if the true owner be at the same time in actual possession of part of the land, claiming title to the whole, *he* has the constructive possession of all the land *not in the actual* possession of the intruder under color only. And this is true although the owner's actual possession is not within the limits of the other's effective title.

> The reason is plain. Both parties can not be seized at the same time of the same land under different titles. The law, therefore, adjudges the seizin of all that is not in the actual occupancy of the adverse party to him who has the better title.
>
> (*Hunnicutt* v. *Peyton*, 102 U. S. 333, 368.)

Where the land is of a character not susceptible of ordinary occupation, and the true owner is a sovereign whose title is deemed in law to "draw the seizin or actual legal possession to it," there would be a technical difficulty in applying this qualifying rule whereby the constructive possession of the true owner offsets the constructive possession of the intruder. But without this sound qualification, constructive *adverse* possession would work manifest injustice.

(*c*) Constructive adverse possession is subject also to the qualification that if there be a total want of title in the grantor, as, for example, a legal inability to make any conveyance at all of the unoccupied land, then the partial possession of the grantee shall not be extended by legal fiction to include land which the grantor had no right to sell.

Proctor v. *Railroad*, 100 Me. 27, 29.
Roberts v. *Baumgarten*, 110 N. Y. 80, 83.

These considerations show that there is no room here for the application of a rule which is, after all, but a legal fiction. (*Carey* v. *Cagney*, 109 La. 77, 82.) For we have land of a totally different character, in law as well as in fact, from that actually occupied—land which is not only *publici juris* and incapable of private ownership, but which lies over the frontier in the territory of an independent sovereignty. As we have seen the soil of the Potomac River was patentable neither in Virginia (*Home* v. *Richards*, 4 Call (Va.), 441, 446, 447) nor in Maryland (*Morris* v. *U. S.*, 174 U. S. 229, 238, 239). The grantor had no

right to dispose of it. The sovereign of the river was not called upon to notice paper transfers of title in the opposite State. Actual possession of the upland only, even if known, would not put him upon notice that he was thereby being disseized of some indefinite area lying beneath the river and extending out to an unlocated line of which he had never heard.

If this be not true, then who can say how many private conveyances, of whose very existence we are now ignorant, may have been invisibly divesting whole stretches of the Potomac River out of Maryland and thus out of the United States? Prescription, as applied between sovereigns, must rest on a more solid basis of fact than that. Constructive adverse possession under color is but a fiction and is ineffectual against fact. (*Carey* v. *Cagney*, 109 La. 77, 82.)

(iii) *It is, moreover, a fiction of municipal law.* This purely American development proceeds upon the basis of local statutes of limitations, and is differently applied according to the particular theory of limitations which the statutes embodies. But the instant cause is not a case of adverse possession. Title by adverse possession, as such, is not a defense against the United States.

> *U. S.* v. *Nashville, etc., Rd.*, 118 U. S. 120, 122.
>
> *U. S.* v. *Insley*, 130 U. S. 263, 266.

All that can concern us, on the contrary, is the rule of prescription as applied between sovereign States. That is not the same thing as the municipal law of

adverse possession. It is a rule of *public law* that this court has held to be applicable between States of the Union. (*Louisiana* v. *Mississippi*, 200 U. S. 1, 53.) And, as the references and citations in the opinions show, it is derived rather from the civil than from the common law, through the adoption by this court of the principle "as established by the constant and approved practice of nations" and expounded in the continental writers on the law of nations.

This "principle of public law, universally recognized that long acquiescence in the *possession* of territory and in the *exercise* of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority," is not involved with any municipal rule of evidence or legal fiction incident to the technique of the law of real property. On the contrary, it is based upon a broad public policy. A sovereign who, for a great length of time, has acquiesced in the obvious possession of an opposing State, is deemed to have *no just right to ignore that manifest fact*, and, by asserting some ancient paper claim, to—

> imperil the tranquillity of the people, the safety of States, and the happiness of the human race. (*Virginia* v. *Tennessee*, 148 U. S. 510, 523.) Citing—
>
> Vattel, Law of Nations, Bk. II, c. 11, par. 149.
>
> Wheaton, International Law, Part II, ch. 4, sec. 164.
>
> *Indiana* v. *Kentucky*, 136 U. S. 479, 510.

In fine, it is grounded upon a consideration of the disastrous consequences which must flow from "any disturbance of long recognized boundary lines" in accordance with which men have lived their daily lives, which have determined their political allegiance and legal *status*, which have served as the orbit of actual *exercise* for the manifold powers of government, and which are bound up with "the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life."

Virginia v. *Tennessee*, 148 U. S. 510, 524.
Maryland v. *West Virginia*, 217 U. S. 1, 42, 43.

As we shall presently show, none of these things is true of the water area involved in this case.

Possession by a private party is relevant only as a physical basis for the exercise of dominion and sovereignty by the State. But a private possession which is merely constructive and fictional can not serve as a basis for the exercise of government. To inject the notion of a *constructive* possession by a private party into this principle of public law is simply to confuse and defeat it. They belong to different orders of ideas.

(iv) Defendant strangely enough cites *Lowndes* v. *Huntington* (153 U. S. 1), in connection with the contention respecting constructive possession.

That was not an interstate boundary case. It involved the right to oyster beds. The colonial grants in question were to the *town* of Huntington, which also had a patent from the State of New York.

Unlike the Howsing grant, they contained apt words for the conveyance of land under water. This court said that the *local* law appeared to be that grants in like terms made to other towns carried the soil of such bodies of water as the obviously inclosed bay there in question. But it rested its opinion on the proposition that, at any rate, the rights respecting *the use* of the bed for oyster cultivation had passed to the town.

> Either the title to these submerged lands passed by virtue of the colonial grants to the town of Huntington, or else it was in the State of New York, *Martin* v. *Waddell*, 16 Pet. 367; *Pollard* v. *Hagan*, 3 How. 212; *Shively* v. *Bowlby*, 152 U. S. 1, and this act, whose validity seems not to be questioned, cedes all the right, title, and interest of the State in these lands to the town, so far at least as is necessary for the purpose of oyster cultivation. (153 U. S. 1, 30.)

In their nature as well as in their language, the Dongan grants to various towns (among them New York) stand on a different footing from Berkeley's patent to Howsing. The history of these noted grants is too large a subject to be gone into here. But nothing has ever been decided concerning them contrary to our three propositions:

(1) That *express* words are essential to convey things held by prerogative title. (Supra, p. 28.)

(2) That *title to the soil* underlying a public navigable tidal river can not be conveyed to a private

individual without legislative authority to do that thing. (Supra, p. 34.)

(3) That a grant to a private individual of land bordering on a public navigable tidal river stops at the water's edge. (Supra, pp. 6, 28.)

See further, as to New York: *Roberts* v. *Baumgarten* (110 N. Y. 380, 383). The fresh-water stream cases, such as the Archer and Cress cases cited by defendant, manifestly have no application.

THIRD POINT.

Territorial ownership and dominion over the Potomac River to high-water mark was not affected by the compact of 1785.

The defendant says that the Maryland-Virginia compact of 1785 made a new interstate boundary on the Potomac. He is forced to admit, however, that it did not do so in terms. In 1908 the District Court of Appeals held that it had not had that effect. (*Evans* v. *District of Columbia*, 31 App. D. C., 544.) Inasmuch as the compact was a well-known historical document, which, moreover, had been the subject of consideration by the Maryland-Virginia arbitrators just a short while before, the same thing must be regarded as having been ruled by the general term of the District Supreme Court in 1881. (*Alex. Canal Co.* v. *Dist. of Colum.*, 1 Mack. (D. C.), 257.)

Before proceeding to an examination of the compact, it may be well to say a word respecting some of the historical matter in the record.

It is true that prior to the Revolution the people of Virginia did not formally acknowledge Lord Balti-

more's right to the whole of the Potomac River to high-water mark on the "further bank" any more than they acknowledged the legality of the grant which had carved the province of Maryland itself out of Virginia's original domain. But whatever the Virginia attitude might be, the validity of Baltimore's charter was beyond assault, and the decision of this court has definitively settled its construction as calling, beyond question, for the high-water mark on the Virginia shore. How Virginia may have affected to treat the soil of the river below high-water mark is of no consequence, unless Virginia's exercise of an opposing claim was acquiesced in by Maryland. Nor is the question here what Virginia and Maryland have agreed to be their boundary since the cession of the District, but what was the true boundary of this territory when the United States acquired it.

The charter gave the Maryland proprietary the entire river to the line of high water. Extracts from the archives (R. 12–13) show that, during the colonial period, Maryland consistently claimed by word and action her true charter limits. When Virginia, at the beginning of the Revolution, for the first time acknowledged Maryland's right to her own territory by declaring in her constitution that the territory contained within the charter of Maryland was thereby *ceded* to the people of that colony—

> with all the rights of property, jurisdiction, and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia,

she attempted in the same instrument to except therefrom—

> * * * the free navigation and use of the Rivers *Potowmac* and *Pocomoke*, with the property of the *Virginia* shores or strands bordering on either of the said rivers, and all improvements which have been made or shall be made thereon. (Rec. 14.)

Maryland promptly repudiated the exception with which Virginia's superfluous concession was sought to be clogged by an unanimous resolution of her constitutional convention, declaring—

> (1) * * * that the State of Virginia hath not any right or title to any of the territory, bays, rivers, or waters, included in the charter granted by his majesty Charles the first, to Cæcilius Calvert, baron of Baltimore,

and

> (2) * * * that the sole and exclusive jurisdiction over the territory, bays, rivers, and waters, included in the said charter, belongs to this State; and that the river Patowmack and almost the whole of the river Pocomoke, being comprehended in the said charter, the sole and exclusive jurisdiction over the said river Patowmack, and also over such part of the river Pocomoke as is comprehended in the said charter, belongs to this State.
>
> Proc. Md. Conv., 1774–1776, pp. 291, 293 (R. 15.)

It is especially to be noted that this same resolution, which so emphatically reaffirmed the Mary-

land's charter title to and jurisdiction over the Potomac, also expressed the view—

> * * * that the river Patowmack, and that part of Chesapeake Bay which lies between the capes and the south boundary of this State, and so much thereof as is necessary to the navigation of the rivers Patowmack and Pocomoke, ought to be considered as a common highway, free for the people of both States. (R. 15.)

This clear treatment of the river in a double aspect, *first*, in respect of title and jurisdiction in one State, and, *secondly*, in respect of common use as a highway for the people of both States, is the key to the origin, purpose, and scope of the compact of 1785.

I. THE GENESIS AND PURPOSE OF THE COMPACT.

The Revolution period closed as it began with Maryland insisting upon her charter limits and repudiating with energy any claim on the part of Virginia to property in the beds, shores, or strands embraced within these limits, but willing to concede, upon principles of international law and comity, that the river might be used as a common highway, provided, of course, the Virginia portion of the Chesapeake, which separated Maryland from the sea, was similarly treated.

It must be remembered that the Constitution, with its comprehensive commerce clause, had not yet come into existence. The States were loosely held together by the Articles of Federation. It was of

deep concern to them that arrangements be made for the use of the great waterways connecting the seaboard with the interior, many of which ran through more than one State or divided State from State. In the absence of a central government having, through complete power over commerce, the right to control the navigation of such rivers, reasonable arrangements for their use by citizens of different States could only be made by direct agreements between the States themselves. The need for such an arrangement in respect of the Potomac was soon rendered acute by the movement for the development of internal navigation.

Under the leadership of Washington, attention had for some time been directed to the importance of the Potomac River as "a means [to use his own words] of becoming the channel of conveyance of the extensive and valuable trade of a rising empire." In 1784 he made a 680-mile tour of the western country and sketched a map of the region between the waters of the Potomac and those of the Youghiogheny, showing the advantages of the Potomac route. A letter to Gov. Harrison, suggesting a plan for the improvement of the Potomac, which, he said, "would mark your administration as an important era in the annals of this country" (Sparks, Writ. Washington, vol. 9, pp. 58–59; R. 108), was brought before the legislature and "public spirit in favor of the Potomac was soon awakened." He also secured the cooperation of Thomas Johnson, the first governor and one of

the leading men of Maryland. From a letter to Lafayette, written at Annapolis on December 23, 1784 (R. 108), we learn that Washington was then in Maryland, as one of several commissioners appointed by Virginia, "to fix matters with the assembly of this State respecting the extension of the inland navigation of the Potomac."[1]

The result of this conference was that the legislatures of both States, by similar acts, united in the incorporation of the Potomac Company,[2] which was organized in 1785, Washington being the first president, and Thomas Johnson, of Maryland, the second.

This scheme for opening up a route to the western country by way of the Potomac was unquestionably the occasion for the attempt by the Virginia and Maryland Legislatures to adjust all pending navigation questions by appointing commissioners for the purpose of forming a compact between the two States—

> * * * to regulate and settle the jurisdiction and navigation of Patowmack, Pocomoke Rivers, and that part of Chesapeake Bay which lieth within the territory of Virginia. 2 Kilty, Laws Md., 1785, c. 1 (R. 35).

Manifestly the term "jurisdiction" is here used "not in the broad sense of whole sovereign authority," but, according to a usage quite common in such

[1] Sparks, Writ. of Washington, vol. 9, p. 82. Report on the Survey of the Potomac, printed by order of the Senate, Wash., 1823, p. 51.

[2] *Washington's Interest in the Potomac Company*, H. B. Adams, p. 89. (J. H. U. Stud. Hist. & Polit. Sc., Ser. III.)

matters, in a restricted sense having reference only to the regulation and policing of waterways and the cognizance of cases arising thereon. (*Roberts* v. *Fullerton*, 117 Wis. 222, 224; 93 N. W. 1111, 1113.)

It does not include sovereignty or ownership of the river or its soil. (*Nicoulin* v. *O'Brien*, 248 U. S. 113, 114; *Nicoulin* v. *O'Brien*, 189 S. W. 724, 727.) Nor does it extend to any local or permanent object, but only to such as are of a "floatable nature." (*Wedding* v. *Meyler*, 192 U. S. 573, 584; *Mississippi & M. R. Co.* v. *Ward*, 2 Black, 485, 494; *Buck* v. *Ellenbolt*, 84 Iowa, 394; *Roberts* v. *Fullerton*, 117 Wis. 222, 226, 232.)

That the word has here no reference to territorial limits of sovereignty is proved to a demonstration by its use with regard to one body of water explicitly stated to be "within the territory of Virginia." As was said by the chancellor of New Jersey concerning the Pennsylvania-New Jersey compact of 1783—

> The requirements of the administration of justice and the necessity of providing for the protection of the navigation of the river gave rise to the compact. These, and these alone, were the objects of it. (*Atty. Gen.* v. *Del. & B. B. Rd. Co.*, 27 N. J. Eq. 1, 11.)

In 1908 the Court of Appeals said of the compact that it did not, by its terms, either express or implied, grant any title to the river or to the soil under it. (31 App. D. C., at p. 548.) The truth of this is brought out by the evidence in this record that no such purpose was entertained by the parties.

The meeting of the commissioners appointed by the two States proved to be an event of great historical importance, for it led to a concrete suggestion for the calling of a convention to remodel the organic law of the Union. In showing this relation to the formation of the Constitution, Chief Justice Marshall, in his "Life of Washington," clearly states the aim and purpose of the compact:

> While the advocates for union were exerting themselves to impress its necessity on the public mind, measures were taken in Virginia, which, though originating in different views, terminated in a proposition for a general convention to revise the state of the union.
>
> To form a compact relative to the navigation of the rivers Potomac and Pocomoke, and of part of the bay of Chesapeake, commissioners were appointed by the Legislatures of Virginia and Maryland, who assembled in Alexandria in March, 1785. While at Mount Vernon on a visit they agreed to propose to their respective governments the appointment of other commissioners with power to make conjoint arrangements, to which the assent of Congress was to be solicited, for maintaining a naval force in the Chesapeake; and to establish a tariff of duties on imports, to which the laws of both States should conform. When these propositions received the assent of the Legislature of Virginia an additional resolution was passed, directing that which respected the duties on imports to be communicated to all the States in the Union, who were invited to

send deputies to the meeting. (Marshall's "Life of Washington" (ed. 1850), vol. 2, p. 105.)

II. THE TERMS OF THE COMPACT.

The compact embraces twelve articles. (R. 35–39.) Most of them are summarized in *Wharton* v. *Wise* (153 U. S. 155, 163–165). The first five relate expressly to the navigation of the Pocomoke, the Potomac, and the Chesapeake. (R. 36.) Virginia disclaims all right to impose tolls or restraints on vessels bound through the capes of Chesapeake to or from Maryland and agrees that so much of the Chesapeake and Pocomoke as is "within the limits" of Virginia shall be a common highway. Maryland and Virginia reciprocally agree that vessels of the other may freely enter their respective rivers as a harbor, or for safety against an enemy, without payment of port duties. "Vessels of war" of either State shall not be subject to payment of port duties. Vessels not exceeding specific dimensions, trading from one State to the other, and provided with a permit from the naval officer of the district from which they depart, are relieved of port charges. All merchant vessels, other than the class just mentioned, which are to navigate the river Potomac are required to clear from some naval office in one or both States.

We pass now to the clauses concerning the Potomac.

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Article sixth declares that the Potomac—

> * * * shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to all other persons in amity with the said States trading to or from Virginia or Maryland.

The remaining articles are but amplifications of this declaration.

The seventh article provides:

> Seventh, The citizens of each State, respectively, shall have full property in the shores of Patowmack River adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharfs and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both States; provided, that such common right be not exercised by the citizens of the one State to the hinderance or disturbance of the fisheries on the shores of the other State, and that the citizens of neither State shall have a right to fish with nets or seans on the shores of the other.

The eighth article provides that all laws and regulations necessary for the preservation of fish or for the performance of quarantine in the Potomac or for preserving or keeping open the channel of the Potomac and the Pocomoke River within the limits

of Virginia shall be made with the mutual consent of both States. (*Ex parte* Marsh, 57 Fed. 719, 726; *Wharton* v. *Wise*, 153 U. S. 155, 175.)

By article nine lighthouses, beacons, etc., are to be erected and maintained on Chesapeake Bay between the sea and the mouths of the rivers Potomac and Pocomoke, and on the river Potomac, at the expense of both States in stated proportion, "and if this proportion [on the Chesapeake] shall in future times be found unequal, the same shall be corrected." A joint commission for the location of such lighthouses, etc., is provided for.

The tenth article deals with piracies, crimes, or offenses committed on that part of the **Chesapeake lying within the limits of Virginia,** or that part where the line of division from the south point of Potomac to Watkins Point, near the mouth of the Pocomoke, **may be doubtful,** as well as on that part of Pocomoke within Virginia, or where the line of division upon the said river **is doubtful.** (R. 37.)

When committed by persons not citizens of Virginia against Maryland citizens they are to be cognizable in the courts of Maryland. When committed by persons not citizens of Maryland against Virginia citizens, they are to be tried in the courts of Virginia. When committed by and against persons not citizens of either State, they are to be tried in the court of Virginia. When committed by a citizen of the one State against a citizen of the other, they shall be tried in the State of which the offender is a citizen.

The jurisdiction of each State over the Potomac shall be exercised in the same manner except that in the case of crimes committed by persons not citizens of either State upon persons not citizens of either State, the offenders shall be tried by the court of the State to which they shall first be brought.

If inhabitants of either State commit any injury upon the property of inhabitants of the other, adjacent to the bay or rivers, or to persons upon such lands, the court of the State where the offense shall have been committed shall make, upon notice to the offender, entry of his appearance, and proceed to trial and judgment in the same manner as if legal process had been served. Such judgment shall bind the person and property of the offender in *both* States.

Any vessel entering a port of the Potomac may be libeled by a process from the State in which such vessel entered, and if the *commercial regulations* of either State shall be violated by any person carrying on commerce in Potomac or Pocomoke Rivers, the vessel owned or commanded by the person so offending may be seized by process from the State whose laws are offended.

Any person flying from justice or attempting to defraud his creditors by attempting to remove his property, such person, or his property, may be taken on any part of the Chesapeake Bay, or the rivers, by process of the State from which such person may fly or property be removed.

Process from either State may be served on any part of the rivers upon any person, or property of any person, who is indebted to a citizen of that State except a citizen of the opposite State.

In all cases tried in pursuance of the jurisdiction settled by this compact, citizens of either State shall attend as witnesses in the other, upon process issued by the other but served by an officer of the county where the citizen resides.

The twelfth article provides that citizens of either State having lands in the other shall have liberty to transport to their own State the produce of such lands, or to remove their effects, free from all duties. Of course these jurisdictional provisions, so far as they were later covered by the Federal Constitution, were thereby superseded. (*Wharton* v. *Wise*, 153 U. S. 155, 167.) But they are illuminating as to the scope and purpose of the arrangement.

The thirteenth article provides for ratification by the legislatures of the two States. And each State enacts that the compact is never to be repealed or altered without the consent of the other.

III. THE EFFECT OF THE COMPACT.

1. *No intent to alter boundary.*—The terms of the compact make it quite plain that it was not the intention or purpose of the States to effect any settlement or alteration of their boundary. Although the compact does speak of the boundary on the Chesapeake and the Pocomoke as doubtful, no suggestion of adjustment is made with respect to that. **And**

nothing whatever is said respecting the boundary on the Potomac.

Had the intention been to establish a boundary different from that of the charter, nothing could have been more easy than to have said so. The importance of the subject is such as to forbid the supposition that the high contracting parties would have done that "in any other than express, precise, formal, and solemn terms." (*Ex. p. Marsh*, 57 Fed. 719, 729.)

The one object of all the provisions is to settle and determine matters of navigation and of judicial cognizance and process, *regardless* of the line between the territories of the two States. The various clauses but express corollaries and consequences of its fundamental provision that the waters mentioned shall be common highways for the citizens of both States, whether said waters lie within the limits of one or of the other. In short, the compact did not touch the question of boundary at all, but worked out with care a system for the concurrent use and police of the waters. It dealt with use and jurisdiction, not with sovereignty. (*Atty. Gen.* v. *Del. & B. B. Rd. Co.*, 27 N. J. Eq. 1, 21.)

2. *Shore and wharf rights without effect on boundary.*—It is argued that a change in the charter boundary of Maryland results, by implication, from the declaration of the seventh article that the citizens of each State should have full property in the shores of the Potomac adjoining their lands, with all emoluments and advantages thereunto belonging, and the privi-

lege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river. This provision is coupled with one making fishing in the river common to the citizens of both States, provided it be not exercised by the citizens of the one to the disturbance of the fisheries on the shores of the other, the citizens of neither State having a right to fish with nets on the shores of the other. All these provisions, it is to be noted, apply equally to both States. Yet it is said that the rights thus recognized in the citizens of Virginia necessarily push the charter boundary of Maryland back to low-water mark.

But it is readily seen that this argument proves too much, for, if the right in the shores is to be translated into terms of boundary and thus carry the line back to low-water mark, the right which the same clause recognizes in the wharves and other improvements must do the like. **The result is that the territorial boundary between the two sovereignties would be not a fixed but a fluctuating line dependent upon the caprice or interested activity of private individuals.**

The only escape from this manifest absurdity is to admit that the rights here recognized involve no change in territorial limits. They were not, and can not be, expressed in terms of boundary. The two things belong to different orders of ideas. The compact here, as throughout, was directed toward the regulation of a common use of the river as a highway and the reciprocal jurisdiction and privi-

leges rendered necessary by such common use. All of its provisions are but the expression of corollaries of the fundamental proposition of the agreement—equality in the rights of navigation.

Nor was there any incompatibility between complete equality of navigation and Maryland's continued sovereignty to her charter line. An illustration of this principle is afforded by settlement of the boundary between the United States and the Spanish possession of the Southwest. In the negotiation leading to the treaty of 1819 the Spanish minister had required that "the boundary between the two countries shall be the middle of the rivers and that the navigation of said rivers shall be common to both nations."

John Quincy Adams, then Secretary of State, agreed "that the navigation of the said rivers to the sea shall be common to both people." But, at the same time, he insisted, with respect to territorial limits—

> "that the United States have always intended that the *property* of the river should belong to them. He insists on this point, as an essential condition, as the means of avoiding all collision, and as *a principle adopted* henceforth by the Union in its treaties with its neighbors. * * * He considered this clause as indispensable and as eminently calculated to preserve a good understanding between the two people."
>
> Annals of Congress, 15th Cong., 2d sess. Appendix p. 2123.
>
> See also reference in *United States* v. *Texas*, 162 U. S. 1, 27.

This distinction has become a commonplace in the regulation and administration of rivers by international convention. Provisions are habitually made for navigation and police upon the principle of the use of the river in common for the purposes of commerce, quite irrespective of the location of the boundary line. (Kaeckenbeck, International Rivers [1918], pp. 15, 34, 74, 134, 184, *et passim*.)

3. *Compact not regarded as determining any question of boundary.* This is established by two facts:

First. That for 90 years thereafter, in connection with the settlement of the western boundary, efforts were made by both States to secure a settlement of the southern boundary. Action to this end was taken by Maryland in 1795, in 1801, in 1831, in 1833, in 1834, in 1872, and again in 1874. Observe this resolution passed 10 years after the compact:

> "*Resolved*, That William Pinkney, William Cooke, and Philip Barton Key, Esquires, be, and they are hereby, appointed commissioners on the part of this State to meet such commissioners as may be appointed for the same purpose by the Commonwealth of Virginia to settle and adjust, by mutual compact between the two governments, the western and southern limits of this State and the dividing lines and boundaries between this State and the said Commonwealth." Acts Maryland, sess. 1795. (R. 82.)

See also—

> Md. act of 1801 and Md. act of 1831.
>
> Resolution relating to the western and southern limits of this State, passed March 5, 1832; Laws, Md., 1831, Res. No. 128. (R. 107, par. b.)
>
> Laws, Md. 1833, Res. No. 80.
>
> Report and resolution in relation to the southern and western boundaries of this State. Laws, Md., 1834, Res. No. 99.

In this report it is explicitly said:

> The southern and western boundaries of Maryland have never been adjusted and defined by compact with Virginia. (R. 82.)

Nor was this understanding confined to Maryland. Virginia also treated the line as undetermined. When the Maryland commissioners, under the act of 1868, c. 370, met with the Virginia commissioners in Washington in February, 1872, no proceedings could be had, because, while the former were empowered only to settle the boundary line on the eastern shore of the Chesapeake, the Virginia commissioners were empowered to settle the entire boundary between the two States. See preamble of Maryland act of April 1, 1872. (R. 83–84, par. i.)

Second. That at the meeting of the joint commission of the two States in 1872, Virginia (in whose interest defendant says the compact of 1785 established the line at low water on the *southern or Virginia* shore) claimed that the true boundary was on the *north* or Maryland bank of the Potomac and

that the entire river was within Virginia by virtue of the Hopton grant. Such is the precise claim made at the close of the printed "Statement on the part of the commissioners of Virginia":

> "Virginia claims the River Potomac to the left or north bank on the western shore and to Scarbrough and Calvert line on the eastern shore of the Chesapeake from Point Lookout to the extremest part of the westernmost angle of Watkins Point, the promontory formed by the north headland of Little Annamessex River or Creek, on the eastern side of Tangier Sound, which headland or promontory is the initial and terminating point of survey between the two States of Maryland and Virginia, ascertained, agreed, and fixed as described, A. D. 1668, by and under their joint and several proper authorities, and by them approved and adopted." (R. 80, par. b.)

The same statement is reiterated in the report of the Virginia commissioners, December 18, 1872. (R. 79.)

Surely the assertion of such a claim shows that Virginia did not consider the compact as having determined the Potomac boundary. At that time, as always, both States recognized its binding force. Yet the claim put forward by the Virginia commissioners is directly contrary to the effect now suggested. Unless we impute to the representatives of a great Commonwealth the grossest bad faith, the claim to the *north* bank is clear proof that Virginia did not understand the compact to have the effect defendant

claims. We can not ascribe to Virginia a secret purpose to claim to the southern low-water line on the ground that the compact had fixed it there, and to ask for more under a title adverse to the compact and in opposition to its asserted significance and effect. Plainly, then, we must conclude that the compact had no such significance or effect.

4. *No reason for giving compact the effect suggested.*—The shore of a river to the line of ordinary high water is part of the river. The State that owns the river owns the shore. (*Alabama* v. *Georgia*, 23 How. 505, 514–515.) This is especially true of a tidal river, the shore of which is twice a day completely overflowed by the tide. When the tide is in, the entire shore lies under the water and is indistinguishable from the rest of the river bed. Only for a few moments at the turn of the ebb tide is the shore entirely exposed. At all other times either the whole or some portion of the shore is overflowed by the waters. The soil, for that very reason, has a special character. Shores are—

> * * * incapable of ordinary and private occupation, cultivation and improvement; and their natural and primary uses are public in their nature, for highways of navigation and commerce, domestic and foreign, and for the purpose of fishing.
>
> *Shively* v. *Bowlby*, 152 U. S. 1, 11.
>
> *Atty. Gen.* v. *Chambers*, 4 De G., M. & G., 206, 218.

Throughout all changes of tide, the high-water mark, which is the upper limit of this unappropri-

ated waste, remains clearly defined. It is a natural, visible sign marking the border line of the stream and separating it and its containing shore from the dry upland, or *terra firma*, which can be put to the ordinary uses of land.

Such is not the case with the low-water mark. Except for a few moments at the turn of the ebb, it is purely an imaginary line indistinguishable by any mark or sign. Taking such an invisible line for a boundary has the effect, for the greater part of the time, of dividing the waters of the stream into two parts, which, for any practical purpose, are indistinguishable one from the other.

What reason, then, can be assigned for abandoning the clearly defined charter boundary at the high-water mark for a line which, except for a few moments twice a day, has no existence and the only effect of which is to make it practically impossible to determine whether one is within one jurisdiction or the other?

The whole argument to the contrary goes upon the ground that the privileges in the shore accorded to Virginia are inconsistent with the retention of the charter boundary on the south side of the river to high-water mark. Such is not the case. There is no more difficulty in according rights in the shore of a Maryland-owned river than in according the right to extend a wharf into a Maryland-owned river. A right in the shore of a Maryland-owned river is no more than a right in the river itself. The shore and the river are one. A shore, overflowed at ordinary

tide, is not susceptible of use except as incident to the use of the stream. The title is held subject to the same public uses as the waters themselves. (*Shively* v. *Bowlby*, 152 U. S. 1, 11, 12.) A shore and a wharf extended from it subserve but one and the same use of the owner of the adjacent upland. The shore is a natural wharf and the wharf an artificial shore. The complete enjoyment of both shore and wharf is consistent with title in another below high-water mark. Such, in fact, is the situation of riparian owners under the law of most of our States.

But a low-water boundary, on the other hand, is inconsistent with that title and dominion in the entire river which in this case belonged to Maryland. It is because of this inconsistency that international law has recognized the principle that where, as here, the ownership of the river is not divided between the bordering States by the thread of the stream but belongs to one of them alone, such ownership carries the opposite bank as an accessory thereto.

> * * * Upon whatever grounds property in the entirety of a stream or lake is established, it would seem in all cases to carry with it a right to the opposite bank as accessory to the use of the stream, and perhaps it even gives a right to a sufficient margin for defensive or revenue purposes, when the title is derived from occupation, or from a treaty of which the object is to mark out a political frontier.

Hall, Int. Law (5th ed.), p. 123 (7th ed.), p. 125; 1 Moore, Int. L. Dig., p. 617.

Taylor (H.), Int. Pub. Law, sec. 241.

Twiss (Sir T.), Int. Law (Peace), sec. 141.

Grotius, *De Jur. Bell. et Pac.*, Lib. ii, c. 3, sec. 17, sec. 18; c. 8, sec. 9 (par. 2).

cf. The Twee Gebroeders, 3 Rob. (Admir.) 336, 339.

Without this ownership of the opposite shore, *at least so far as the water commonly and habitually extends*, the sovereign of the whole stream can neither enjoy the benefits nor perform the obligations incident to his ownership of the river as an entirety. Without it he is not truly sovereign of his own river.

> *Ripa ea putatur esse quæ* PLENISSIMUM *flumen continet.* Dig. 43, 12, 3, § 1.

Concession by the owner of the stream of a privilege in the waters and adjacent shore is no more inconsistent with title to the full extent of the stream under international than under municipal law. Rights thus ceded by the owner are taken to be ceded without prejudice to the other rights which belong to him. (Vattel, Bk. I, ch. 22, sec. 273.) Therefore the cession of a right of user, for whatsoever purpose, can not be deemed a surrender either of the basic right of property or of territorial sovereignty. (Rivier, Droit des Gens, t. I, p. 296.) It is an easement, not a title. The owner remains the owner.

If, then, we construe the compact, as it should be construed, as essentially a treaty between two sovereign States dealing with the use of a river upon principles of public law (*Howard* v. *Ingersoll*, 13 How. 381, 412), the privileges in the waters and adjacent shore accorded to Virginia amount to no more than the recognition of a servitude in the stream which (in international relations) is generally allowed in favor of the citizens or subjects of the opposite sovereign. The rights allowed in the appurtenant shore are but an incident of the rights allowed in the stream. This provision, therefore, was but a further means of carrying out the dominant idea of the compact, namely, that the river should be a common highway for both States. Such uses as the shore can be put to for the lading or unlading of goods, the construction of wharves, or the extension of the latter into the stream, like commercial navigation in general, are but forms of that "innocent use of territorial waters" which one sovereign accords by convention or customary law to citizens of neighboring States. (*The Apollon*, 9 Wheat., 362, 369; Wheaton, Int. L., sec. 193, 194.) The concession of such privileges or servitudes does not negative the retention of territorial sovereignty and ownership. Nor does it work an alteration of boundary.

Hall (5th Ed.), pp. 139–140, 159–160.
Wheaton, Elem., pt. ii, ch. iv, sec. 11.

Such State servitudes, moreover (as we shall presently see), necessarily came to an end when,

first, by force of the Constitution, and secondly, by force of the acts of cession, the United States became not only the government possessing power over commerce and navigation, but, within the original lines of the District, the single and indivisible sovereign of the whole river and both its shores, having the sole right to determine what, and in what manner, use should be made of the same:

More v. *Steinbach*, 127 U. S. 70, 81.

Shoemaker v. *United States*, 147 U. S. 282, 307.

Morris v. *United States*, 174 U. S. 196, 241.

Since, therefore, the river was throughout the dominant and controlling factor, and its use in common the object and purpose of the agreement, the compact readily harmonized the interests of both parties by leaving untouched the charter high-water boundary which is the essential mark of Maryland's undoubted ownership and dominion of the entire river and conceding Virginia, at the same time, full property in the shore and full right to wharf out therefrom as an incident of, and means facilitating, the agreed use of the waterway in common. To the framers of the compact the right to the shore was an incident of the right in the river. It was, to borrow Wheaton's words, "a means to the attainment of the end for which the use navigation of the water is permitted."

Wheaton, sec. 194; Halleck, ch. vi, sec. 27; Westlake (Ed. 1904), Pt. I, p. 159; Taylor (H.), sec. 240.

It may be suggested, perhaps, that the view just expressed is opposed to the use of the terms "full property in the shores." But what does "property" here mean? Inasmuch as the compact was made by the States in their sovereign capacities, subject at any time to be modified or abrogated by their joint will (*Georgetown* v. *Alex. Canal Co.*, 12 Pet. 91, 96), benefits thereby resulting to individuals were purely incidental and secondary. (Oppenheim, Int. Law, I., sec. 204, sec. 520.) They could exist only so long as the high contracting parties wished. "Full property in the shore," therefore, meant only such "property" as could be enjoyed while the States chose to keep the compact in force. Hence, it could not mean property in the sense of a vested estate, as in one's own land, which could not be taken away by such joint action of the States. It had nothing in common with seisin. What was meant was obviously a full enjoyment of all the uses of the shores so long as the compact remained in force—a right of user and enjoyment quite distinct from ownership, a *jus in re aliena*, an easement or servitude within the territorial limits of Maryland's river, created by and resting solely upon the compact. (Hall, Int. L. (5th ed.) p. 160.) It was, therefore, wholly without effect upon the charter boundary.

Nothing contrary to our view was decided in *Potomac Steamboat Co.* v. *Upper Potomac Steamboat Co.* (109 U. S. 672). That case was not an adjudication upon the construction or effect of the compact of 1785. Nor did it involve any controversy between

the sovereign of the river and private individuals. The existence of a wharfing right was not disputed, for both parties claimed it—the plaintiff as appurtenant to a lot fronting on Water Street and separated by it from the wharf, the defendant under a license from the public as owner of Water Street.

The point decided (afterwards reaffirmed in *Morris* v. *United States*) was that the city of Washington is properly bounded by an exterior Water Street, and that such street, being the front estate, possesses all riparian rights whatever they might be. Thus the case is not an authority upon the nonlitigated question as to the precise nature and extent of riparian rights. Nor is it an authority upon the question whether or not riparian rights are held in complete subordination to the right and power to improve navigation. (*Greenleaf-Johnson L. Co.* v. *Garrison*, 237 U. S. 251). Much less is it an authority on the effect of the compact of 1785. What was said about the compact was by way of argumentative good measure. Plaintiff, the court said, must fail on any possible view; for if one conceded that the wharfing privileges of the compact implied an ownership in the soil of the shore, then the disputed wharf, being land, could not pass as an appurtenance to plaintiff's lot—and that was the only way in which plaintiff claimed it (p. 685).

It is contrary to every rule of logic and law governing the use of precedent to endeavor to turn this concession *arguendo* into a decision upon the compact. Note, moreover, that the implication is

that the rights under the compact are in the nature of a franchise, whereas defendant's whole case rests upon their constituting seisin of the subjacent land. It is not proper, however, to treat this case as an authority either way, for none of the important questions now before the court as to the intent and purpose of the compact, the effect of the cession, and the rights of the United States was then at issue.

Defendant argues that, if we are right, Maryland, after the compact, could have prevented Virginia from regulating the shipping within the harbor, and indeed could have made Alexandria an inland town by building a sea wall across its front. But the compact took care of that. It declared the river a "common highway" and provided:

> Eighth. All laws and regulations which may be necessary . . . for the performance of quarantine in the river Patowmack, or for preserving and keeping open the channel and navigation thereof . . . by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both States. (R. 37.)

There was, at that time, no unified central power over commerce. It was for that very reason that they made the compact. So far as the navigation of this "commoa highway" was concerned, Virginia and Maryland stood toward each other as independent coriparian States. The Constitution put an end to that situation, as indeed for most purposes it put an end to the compact.

Because the National Government can build such a wall to improve navigation, it does not follow that Maryland, having no paramount power over the navigation of this common highway, could have done the same thing. Manifestly no improvement could have been made except "with the mutual consent and approbation of both States." Hence there is no occasion to turn the compact from its obvious meaning and purpose in order to preclude the direful consequence suggested.

The suggestion that our contention would permit Alexandria to be bottled up belongs to that class of arguments which would nullify an otherwise incontestible power of government by an imaginative speculation of the consequences which might follow from an abnormal exercise of it. (*Am. L. Co.* v. *Zeiss*, 219 U. S. 47, 67. *Blinn* v. *Nelson*, 222 U. S. 1, 7.) It would be equally reasonable to argue that *Gibson* v. *U. S.* and *Scranton* v. *Wheeler* can not be law, for if so, the Federal Government could bottle up St. Louis with a seawall and so divert all the Mississippi traffic to Memphis.

The people through the Constitution having invested the Federal Government, as the guardian of the public welfare in that regard, with the paramount and plenary power to control navigation, it is literally true that Congress, if it deemed that course essential to the maintenance and highest utilization of an indispensable waterway, would have power to construct a wall or dyke which might destroy the com-

merce of some locality by cutting off the front of a city absolutely from the water. But why speculate whether the general public interest could ever require any such sacrifice?

New York did, in fact, engirdle a system of monopolized docks by a new system. (*Sage* v. *Mayor*, 154 N. Y. 61.)

Defendant's argument on this head serves to emphasize a vital point which seems elsewhere to be overlooked. *The thing that took away defendant's access was the seawall which cut off its upland from the river.* (R. 6, par. 8.) The right to construct such a wall in the improvement of navigation (as well as the correlative rule that the harm thereby done the riparian owner is consequential and no legal wrong), is already settled. (*Supra*, p. 9.) The circumstance that the mud dug out to improve the channel was deposited in the shallow water behind the wall is but an incident of the improvement. It did not alter the effect already produced by the wall. The issue here being title, the question is simply—on whose soil in point of property was the dredged soil deposited?

IV. THE COMPACT WAS NEVER IN FORCE IN THE DISTRICT OF COLUMBIA.

In *Evans* v. *United States* (31 App. D. C. 550), the Court of Appeals held that—

> the compact of 1785 never was in force in the District of Columbia (p. 550).

That conclusion is the necessary consequence of what this court held in *The Mayor, etc., of Georgetown* v. *The Alexandria Canal Company* (12 Pet. 91):

> The compact made in the year 1785, between Virginia and Maryland, was made by the two States in their character as States. The citizens, individually, of both commonwealths were subject to all the obligations imposed, and entitled to all the benefits conferred by that compact. But the citizens as such, individually, were in no just sense the parties to it; those parties were the two States, of which they were citizens. The same power which established it was competent either to annul or to modify it. Virginia and Maryland, then, if they had retained the portions of territory respectively belonging to them on the right and left banks of the Potomac, could have so far modified this compact as to have agreed to change any or all of its stipulations. They could, by their joint will, have made any improvement which they chose, either by canals along the margin of the river, or by bridges or aqueducts across it, or in any other manner whatsoever.
>
> When they ceded to Congress the portions of their territory embracing the Potomac River within their limits, whatsoever the Legislatures of Virginia and Maryland could have done by their joint will after that cession could be done by Congress, subject only to the limitations imposed by the acts of cession. (12 Pet., p. 96.)

In that case this court decided that, notwithstanding what the compact said respecting the free use of the river by the citizens of both States, Congress had full power to authorize its improvement by canals along the margins or by bridges or aqueducts or in any manner whatsoever (p. 98).

The successive stages in the reasoning by which the compact is shown never to have been in force here may be stated thus:

(*a*) Since the compact was made by Maryland and Virginia in their character as States, it was within their power, by their joint will, at any time to change its terms or abolish it altogether.

(*b*) By the acts of cession both States surrendered all their rights of property, as well as their entire sovereignty within the territory ceded, which included the whole of the river, its bed and its shores on both sides.

(*c*) The absolute power which they possessed over the compact passed immediately to the United States, and whatsoever they could have done jointly the United States could do alone.

(*d*) The vesting of this absolute power in one sovereign, the United States, amounted to an abrogation or dissolution of the compact. The *mutuus consensus*, upon which alone it rested, necessarily came to an end when the two contracting parties were united in one. The compact, therefore, was never in force in the District of Columbia.

As confirming the conclusion thus reached, that court pointed to the fact that, with respect to the

District of Columbia, so unified under one sovereign, there was no function which the compact could possibly perform.

> * * * It was not a consideration in the acts of cession either as to soil or the protection of the vested rights of citizens within the district ceded. It was not essential that it should be, as the entire river within the District of Columbia was under the control of the General Government. The citizens of the District of Columbia on both shores enjoyed equal rights with respect to it. (*Evans* v. *United States*, 31 App. D. C. 550.)

V. THE RETROCESSION TO VIRGINIA DID NOT REVIVE THE COMPACT.

The easements and privileges possessed by Virginia in the river under the compact with Maryland were destroyed by the joint cession to the United States.

Nor were these easements and privileges revived by the retrocession to Virginia of the portion of the original District which came from her.

The act, July 9, 1846, 9 Stat. L. 35, c. 35 (R. 41), provided that—

> * * * all of that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction as well of soil as of persons residing or to reside thereon.

If the act of retrocession be compared with the act of cession, it will be seen that the former was but a retransfer to Virginia of that identical territory, with the rights and jurisdiction over the same, which was received by the United States from Virginia. Now, the territory ceded to the United States by Virginia was a defined territory extending only to high-water mark on the south side of the Potomac River, which was the boundary line of Virginia as fixed by the grant from the English Crown. From the moment of retrocession the United States, which up to that time, as joint successor of both States, was sovereign of all the territory formerly owned by each, namely, the territory on both shores of the river, as well as the river itself, became and was vested with the same absolute sovereignty over everything that had not been acquired from Virginia, namely, the land to the north of the river and the river itself to the boundary line between the two States. In other words, the original boundary was instantly restored.

But the compact was not restored, either expressly or by implication. The act of retrocession is wholly silent with respect to it. Can one conceive that, if the intention had been to revive it, nothing would be said on the subject? It was obviously the understanding of both parties that the compact had been wholly merged in the sovereignty of the United States as the complete and absolute successor to the rights of both parties to the instrument. Nor was there

any revival by implication. As pointed out by the court below:

> * * * The United States was not a party to the compact of 1785, either originally or by subsequent acceptance of its terms. At the time of the retrocession Maryland was not present at the point of controversy, and there was no one connected with the transaction upon whom Virginia would lay claim to a revival of the terms of the compact. At the time Virginia ceded her portion of the District of Columbia to the United States she ceded certain described territory. It extended to the high-water mark on the south side of the Potomac River, which was the boundary line of Virginia, as fixed by the grant from the English Crown. The easements and privileges she possessed in the river, under the compact, were destroyed by the cession to the United States, and having been lost, they could not be revived by the mere reconveyance of the territory ceded, unless expressly recreated in the act of retrocession. (*Evans* v. *United States*, 31 App. D. C. 544, 552.)

This results from a principle recognized in international as in municipal law. At common law from the instant that the dominant and servient estates are united in the same owner, the servitude is extinguished and does not again arise upon severance unless it be reimposed by express words.

> *Capron* v. *Greenway*, 74 Md. 289, 293.
> *Denton* v. *Leddell*, 23 N. J. Eq. 64, 66.

Rogers v. *Powers*, 204 Mass. 262, 264.

Greenwood v. *Met. Elev. R. Co.*, 12 N. Y. Sup. 919.

Hennessy v. *Murdock*, 17 N. Y. Sup. 276.

Washburn, Easements, sec. 693.

Gale, Easements (8th Ed., 1908), pp. 18, 181, 519.

The same rule of *consolidatio* is also established in the Roman law,[1] from which, as from a vast storehouse of principle, international law, through Grotius and the publicists of the seventeenth and eighteenth centuries, derives so much of its doctrine. (Calvo, Droit Int. I, p. 33.) It is clearly recognized as applicable to international servitudes. (Rivier, Droit des G. I, p. 296, II, p. 141.)[2]

Since the provisions of the compact were not revived, either expressly or by necessary implication, it follows that shore and wharfing servitudes which owed their existence solely to the compact, and were neither continuous nor apparent, were not restored by the retrocession. (*Evans* v. *Dist. of Columbia*, 31 App. D. C. 544, 552.)

[1] *Paulus libro quinto decimo ad Sabinum.* Si quis aedes, quae suis aedibus servirent, cum emisset traditas sibi accepit, confusa sublataque servitus est, et si rursus vendere vult, nominatim imponenda servitus est: alioquin liberae veniunt. Dig. lib. 8, tit. 2, l. 30, pr.

Gaius libro septimo ad edictum provinciale. Servitutes praediorum confunduntur, si idem utriusque praedii dominus esse coeperit. Dig. lib. 8, tit. 6, l. 1, § 1.

Cf. Marcadé, Explic. du Code, t. II, p. 631 (Art. 705). Pardessus, Traité des Servitudes, §§ 16, 296, 299.

[2] Elle [servitude internationale] prend fin d'après les regles ordinaires de nullité ou de resolution des traités internationaux. Elle s'éteint encore par voie d'abandon, de *consolidation* et de renonciation ex presse. Heffter Droit Int. trad. française, § 43, p. 93.

But if we concede that they were revived, what is the consequence? Simply the recognition of rights or privileges would still leave the charter boundary intact and the dominion and sovereignty of the United States coextensive with that which passed by the cession from Maryland. Rights of that character would not prevent the United States from improving the river. (*Infra*, 142.) Nor would the impairment of any such rights make the Virginia upland owner the owner of another and different area of which he was never seized. (*Infra*, 149.) And even assuming that the upland owner got a title in the shore—which is the space between high-water and low-water marks—that would not invest him with title to the bed of the river out to the seawall. (*Infra*, 138–141.)

FOURTH POINT.

The arbitration award of 1877 is not only without binding effect with respect to the boundary between Virginia and the District of Columbia, but it is also without persuasive force as a solemn adjudication upon a similar question.

It is hardly necessary to argue the proposition that the award made by the Virginia-Maryland arbitrators in 1877 neither had nor could have the effect of determining the boundary between Virginia and the District of Columbia. The award was necessarily limited to the subject matter of the submission which was the boundary between those two States.

Nor can the award be regarded even as persuasive upon the question here at issue, for these reasons:

In the first place, the question of high or low water boundary was not before the arbitrators.

The chief point of controversy was not the Potomac, but the Chesapeake and Pocomoke, boundary. It is to that point that the major part of the evidence, as well as of the opinion is addressed. And with respect to the Potomac, the question was not whether the boundary was the high or low water line—for Maryland went into the arbitration conceding the low-water line. For some years prior to the submission, during the efforts to settle these boundary questions by agreement, Maryland has steadily made this concession.

The "Statement on the Part of the Commissioners of Maryland," in 1872, submits to the Virginia commissioners the following line, to be established by compact between them:

> Beginning at low-water mark at the divisional line between the two States of West Virginia and Virginia, upon the southwest coast or shore of the Potomac River; thence following the said river at said low-water mark, to all wharves and other improvements now extending, or which may hereafter be extended, by authority of Virginia from the Virginia shore into the said river beyond low-water mark, and following the said river, around said wharves and other improvements, to low-water mark on the southwestern side thereof, and following the said river in the same manner down to the easternmost angle of Smiths point at the mouth of the said river Potomac, where it flows into the Chesapeake Bay. (R. p. 108, par. d.)

The only issue, then, as to the Potomac was, not whether the boundary line was the line of high or low water (the latter being conceded for the purposes of the arbitration), but whether Virginia could make good her claim to the ***whole of the Potomac*** to the north or Maryland bank, notwithstanding the revocation of the Virginia charter and the subsequent grant to Baltimore.

As already pointed out, *supra*, the mere assertion of a claim to the whole river was proof that Virginia did not understand that the compact had altered the boundary to low water on the south shore. This claim could not, indeed, be maintained. But Virginia earnestly sought to support it in two ways:

(*a*) By the combined effect of the resumption of the government of Maryland by the Commonwealth and the grant to Hopton and others made by Charles II during his exile and confirmed on May 8, 1667, of the northern neck of the colony of Virginia lying between the Rappahannock and the Potomac River. Of this, the Virginia commissioners had said:

> Not only by successful revolution and sovereign power, *de jure et de facto*, was Virginia, by the treaty-making power itself, restored to her ancient limits, but her boundary and jurisdiction on the Potomac River was fixed by royal grant as well as by the articles of surrender to the Commonwealth. (R. 80.)

This contention, grounded on the theory that Charles II was free to give Hopton "the islands

within the banks of the Potomac and the river itself" was answered by the fact that Lord Baltimore and his successors, claiming under the elder grant, had for two centuries exercised full proprietary and political dominion over the river and the islands. But that circumstance does not weaken its effect as evidence that Virginia did not regard the compact as readjusting the boundary.

(*b*) Virginia also sought to support her claim by what was described as "a curious result of survey in demonstrating, perhaps, what the words 'ulteriorem fluminis ripam,' in the Baltimore grant, meant." (R. 81.)

The Virginia statement says that Michler, in running the meridian of the head spring of the Potomac, found that—

> * * * within four or five thousand yards north of the stone and spring his meridian line struck the Potomac River, there running northwest. Instead of running south from the parallel of 40° to the spring, he was running north from the spring to the parallel—exactly the reverse of the course required by the grant. The grantor, as it were, standing on the parallel of 40°, gave a line inclining south from the meridian of the spring to the ulterior bank of the river from his standpoint on the parallel. The river running there northwest and then deflecting west and south until it takes its general course southeast, the ulterior bank of the river was, geographically, the left bank thereof. (R. 81.)

The contention as an application of the charter is extravagant. But the fact that Virginia made it proves that she did not understand that the compact had changed the boundary.

From the foregoing it is plain that in the arbitration there was no substantial issue between the parties with respect to the boundary on the Potomac, and, in particular, that, Maryland being already willing to concede the low-water mark, the question of high-water mark *vel non* was not really before the arbitrators. While the arbitrators differed radically on the contested question of the Chesapeake and Pocomoke boundary, they were naturally in accord in the conclusion reached as to the Potomac. All they had to do was to determine, as they did, that "the intent of the charter is manifest all through to include the whole of the river within Lord Baltimore's grant," and to supplement this with Maryland's concession of a boundary at low-water mark.

But the reasons suggested by the arbitrators why this should follow from the compact are not the grounds of a mature judgment upon a disputed point reached after full discussion by parties interested in maintaining opposite sides of the controversy.

It thus lacks the first requisite of a persuasive—not to speak of a controlling—adjudication.

Pollock v. *Farmers L. & T. Co.*, 157 U. S. 429, 574.

The Genesee Chief, 12 How. 443, 455.

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Confessedly without binding force on the issue here, the finding of the arbitrators is also without efficacy to refute the clear proof that the compact neither had, nor was intended to have, the effect of altering, settling, or adjusting the territorial boundary of Maryland.

FIFTH POINT.

The act of March 3, 1879 (20 Stat., 481), giving the consent of Congress to the agreement or award between Virginia and Maryland, does not make such award applicable to the boundary between the District of Columbia and the State of Virginia.

Defendant offered (R. 66) the act of March 3, 1879 (20 Stat., 481), giving the consent of Congress to the agreement or award between Virginia and Maryland. This offer could have no other object than to show that the award made in respect of the Maryland-Virginia boundary applies to that part of Potomac River which lies within the District of Columbia. But the obvious purpose of the act was to give the consent of Congress, required by clause 10 of Article I of the Constitution, to the compact between the two States. And such was the limit of its scope and effect.

Defendant seeks to give it a different and extended effect by reason of the following language in the proviso:

> That nothing therein contained shall be construed to impair or in any manner affect any right of jurisdiction of the United States in and over the islands and waters which form the subject of the said agreement or award. (R. 64.)

The argument grounded upon these words seems to be this: That the United States, by reserving "any right of jurisdiction" it might have over the islands and waters "which form the subject of the said agreement or award" thereby extended its operation to islands and waters over which the United States did have jurisdiction, namely, the islands and waters in the District of Columbia. It would not be easy to frame a more obvious fallacy. For the whole operation of the reservation of jurisdiction is limited by its own terms to those islands and waters which "form the subject of the award." All others are necessarily excluded. Moreover, the proviso is a mere saving clause, the effect of which is to reserve whatever right of jurisdiction the United States might have in the premises. It would be an extraordinary thing to construe this reservation into a surrender of jurisdiction.

The proviso expresses merely an abundant caution and safeguards any possible right of jurisdiction the United States might have over any of the islands and waters of the Potomac and Chesapeake Bay lying between the two States, notwithstanding the division thereof made by the award to which Congress was giving its consent.

This is confirmed by the following circumstance: The language appears to have been copied *verbatim* from the act of June 28, 1834, c. 126 (4 Stat. 708), giving the consent of Congress to the agreement or compact entered into on September 16, 1833, between New York and New Jersey with respect to the

boundary line and jurisdiction on the waters near New York. The compact and the consenting statute were the subject of consideration by this Court *in re* Devoe Manufacturing Company, 108 U. S. 401, 415:

> Article second of the agreement provides that "the State of New York shall retain its present jurisdiction of and over Bedlows and Ellis Islands; and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that State." Other articles of the agreement provide for the exclusive jurisdiction of New York or New Jersey over specified waters. In giving consent to the agreement, and "each and every part and article thereof," Congress was consenting, apparently, as against any rights of jurisdiction which the United States then had, to the exclusive jurisdictions of New York and New Jersey, respectively, over the islands and waters referred to. Hence, for abundant caution the clause in question was added. New York had, by an act passed February 15, 1800, 1 R. L. 189, ceded to the United States jurisdiction over "all that certain island called Bedlows Island, bounded on all sides by the waters of the Hudson River, all that certain island called Oyster Island" (known afterward and now as Ellis Island), "bounded on all sides by the waters of the Hudson River," and also Governors Island, reserving to the State the right to serve and execute, on those islands, respectively, civil or criminal process issuing under the authority of the State.

In short, the words of the proviso, as originally inserted in the act of 1834, were intended to relate to islands or waters owned by the United States *which lay within the territory covered by and forming the subject matter of the agreement*, not to lands or waters outside that territory. There can be no reason, then, for attempting, in this case, to apply the same words to lands or waters not within the territory forming the subject matter of the agreement.

As this court points out, the clause was added in 1834 for "abundant caution," since Bedlows and Ellis Islands were by the compact itself confirmed to New York, the grantor to the United States. In the act of 1879 they seem to have been copied from the precedent out of *superabundant* caution, with a view to guarding against the possible case of any islands or waters owned by the United States within the territory covered by the agreement. In both instances the proviso necessarily relates to and is limited by the subject matter of the agreement, viz, the lands and waters in dispute.

SIXTH POINT.

The case of Maryland v. West Virginia, 217 U. S. 1, 577, is not an authority on the question whether the Potomac boundary is high or law water mark, because that point was not litigated.

The substantial question in that case was the long-pending controversy as to the true western boundary of Maryland (p. 26). The point actually decided was that the Deakins line of 1788, by practical

recognition and adoption, had become the fixed line (p. 46). (See *Maryland* v. *W. Virginia*, 225 U. S. 1.)

The boundary on the Potomac was brought into the case by West Virginia's claim in her cross bill that she was entitled to the whole of the Potomac River to the north bank thereof. This claim, which was a palpable makeweight, was treated as already foreclosed by the case of *Morris* v. *The United States*, 174 U. S. 196. A quotation from that case to the effect that the charter of Maryland called for the river to its farthest bank on the south and that this right had not been taken away by any valid proceeding prior to the Revolution was this court's only answer to the contention. (217 U. S. p. 45.)

When a decree came to be settled in accordance with the opinion, it was found that the drafts submitted by Maryland and West Virginia, respectively, differed in two particulars: First, as to whether the boundary along the south bank of the Potomac should be located at high-water mark, as stated in the Maryland draft, or at low-water mark, as stated in the West Virginia draft; and second, as to whether the cost of the survey should be equally divided, as suggested by Maryland, or, as suggested by West Virginia, that each State should bear its own expense.

As to the first particular, the court said:

> In the former hearing, however, and in the decision rendered, the attention of the court was not directed to the question whether the boundary of Maryland should be at high-

> water mark or at low-water mark along the southern bank of the Potomac River (p. 578).

The court then stated the history and result of the arbitration of 1877, which gave Virginia a proprietary right on the south shore to low-water mark, by reason of her assent to the compact of 1785, and said:

> The compact of 1785 (see Code of Virginia, v. 1, title 3, ch. 3, par. 13, p. 16) is set up in this case, and its binding force is preserved in the draft of decrees submitted by counsel for both States (p. 580).

It was upon this basis alone that the court proceeded to say that it agreed with the arbitrators in the opinion that—

> * * * the privileges therein reserved respectively to the citizens of the two States on the shores of the Potomac are inconsistent with the claim that the Maryland boundary on the south side of the Potomac River shall extend to high-water mark.

The decree was drawn accordingly.

Nothing can be plainer than that Maryland was not pressing a claim to the high-water line. The total failure to mention the subject at the hearing of the cause is a sufficient proof of that. Witness, also, the voluminous record, substantially the whole of which is directed to the western boundary line. As for the Potomac, West Virginia having set up a claim for the entire river, Maryland contented her-

self with meeting that extravagant claim and said nothing about high or low water mark, the latter of which, as to Virginia, she had long since accepted as her Potomac boundary. The case was fought to a finish on the real controversy.

The question of high or low water mark came subsequently into the case only by reason of the court's having apparently indicated, by its quotation from the *Morris* opinion, an understanding that Maryland, owning the river, must own to high-water mark. Although they had not theretofore asserted any such claim themselves, "and the court's attention had not been directed to the question" (p. 578), Maryland's counsel, manifestly out of deference to the court, framed their draft decree in that sense. As both drafts recognized the binding force of the compact, the court readily adopted the conclusion of the arbitrators, which Maryland herself had never disputed, and was not then disputing.

Plainly, the question of high or low water mark was not litigated before the court, and the opinion concerning it can not be deemed a binding authority on the question. (*The Genesee Chief*, 12 How. 443, 455; *Ex parte* March, 57 Fed. 719, 730.)

As already pointed out (*supra*, p. 80), the conclusion of the arbitrators was really grounded upon the concession made by Maryland in the preliminaries to the arbitration and was not a decision upon a contest as to high or low water mark. To fortify the conclusion, indeed, the arbitrators added, without discussion, a bald statement that the privileges

reserved by the compact are inconsistent with Maryland's continuing her claim to her charter boundary. It is this which the court contented itself with repeating.

But we submit we have shown that it is impossible to translate the privileges of the compact into terms of territorial boundary and that there is not, either by municipal or by international law, any inconsistency between retention of title to high-water mark and the concession of the privileges accorded to Virginia.

SEVENTH POINT.

The boundary line between the District of Columbia and Virginia is not determined by imaginary straight lines drawn from headland to headland along the river.

The mere substitution of a low-water for a high-water boundary line would still leave practically the whole of the reclaimed area within the District of Columbia. In order to defeat this action, defendant is forced to contend not that the compact changed the boundary from the high to the low water line, but that it changed it to a series of imaginary straight lines drawn at low-water mark from headland to headland.

I. NO HEADLAND TO HEADLAND DOCTRINE.

This claim for a river boundary running in straight lines is nothing less than startling. There are several State boundaries extending along the further river bank, drawn, in some instances at high, in others at low-water mark. For example, the Kentucky-

Ohio boundary on the Ohio River; the Kentucky-Indiana boundary on the same river; the Alabama-Georgia boundary on the Chattahoochee River. But so far as we are aware, it has never been contended that any such boundary should run in straight lines from headland to headland across the ordinary indentations and sinuosities of the shore. Of course, where an interior stream flows into the boundary river, the frontier line is drawn across its mouth, so as not to give the opposite States access to the interior of each other. But that is an altogether different matter.

The defendant's contention respecting the Potomac is derived solely from the language employed by the arbitrators in the Virginia-Maryland award of 1878. It seems to be due to a misconception of certain international law notions with respect to external maritime boundaries. Interstate rivers offer no opportunity for the application of such notions, even if their validity be admitted. But, so far as the public law of the United States is concerned, the headland-to-headland doctrine, as such, has never been accepted, even for the seacoast.

> The headland theory, as it is called, has been uniformly rejected by our Government, as will be seen from the opinions of the Secretaries above referred to. The following additional authorities may be cited on this point:
>
> President Woolsey makes the following comment on the "headland" claim: "But such

broad claims have not, it is believed, been much urged, and they are out of character for a nation that has ever asserted freedom of doubtful waters, as well as contrary to the spirit of more recent times.

In an opinion of the umpire of the London commissioners of 1853 it was held that: "It can not be asserted as a general rule that nations have an exclusive right of fishery over all adjacent waters to a distance of 3 marine miles beyond an imaginary line drawn from headland to headland."

* * * * *

We may therefore regard it as settled that, so far as concerns the eastern coast of North America, the position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond 3 miles from low-water mark and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands so as to place round such islands the same belt. This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland and makes it follow closely, at a distance of 3 miles, the boundary of the shore of the continent or of adjacent islands belonging to the continental sovereign. (Bayard to Manning, May 28, 1886; 1 Moore, Int. Law Dig., pp. 719, 720.)

II. NO MARITIME HEADLAND LINE EXCEPT ACROSS LANDLOCKED WATERS.

In some cases, it is true, maritime boundaries have been defined by a straight line between headlands. That was not because a water boundary, as such, runs from headland to headland, but because in the particular instance the headlands marked the entrance to an estuary or bay *wholly inclosed within the territory of the adjacent State.*

The line is drawn thus because, in the language of Mr. Secretary Jefferson, such tributary rivers and bays are, "as being landlocked, within the body of the United States." (Jefferson to Hammond, Nov. 8, 1793; 1 Moore, Int. Law Dig. 703.)

The matter was similarly put by Secretary Pickering in a letter to the lieutenant governor of Virginia, September 2, 1796:

> * * * any waters or bays which are so landlocked as to be unquestionably within the jurisdiction of the United States, be their extent what they may. (1 Moore, Int. Law Dig., p. 704.)

Such cases have no relation whatever to marginal waters. *Nor does a high or low water boundary line ever run from point to point across ordinary indentations or sinuosities of the shore, such as the so-called "Battery Cove."* The reason of the thing was stated by Attorney General Randolph in his opinion concerning Delaware Bay. Nations are conceded the right to draw such a boundary for the purpose of "prohibiting foreigners from gaining, without per-

mission, access into the heart of their country." (1 Op. A. G. 32.)

Obviously, only tributary rivers and bays distinctly enclosed within the State's own territory fall within the principle. Mere sinuosities and indentations, not landlocked, afford no access into the heart of the country.

In the international field, familiar illustrations are the Chesapeake and Delaware. The reasons upon which the principle rests are admirably elucidated in Mr. Randolph's opinion. "The corner stone of our claim," he says, "is that the United States are proprietors of the lands on both sides of the Delaware, from its head to its entrance into the sea." The river and the bay of Delaware are identical. They form one body of water which, *arising* within the territory of the United States and *not leading* from the sea to the dominions of any foreign nation, is enclosed for its *entire* distance by lands in the ownership of the United States. To such a body of water may be applied the principle stated by Grotius that the water belongs to him who is in possession of the land on both sides, though it be open above, as a gulf, or above and below, as a strait, provided it is not so great a part of the sea that, when *compared* with the lands on both sides, it can not be supposed to be some part of them. (Grot. *De Jur. Bell. et Pac.*, Bk. 2, c. 3, sec. 7.) Otherwise foreigners would have, through the Delaware, access into the heart of the country. (1 Op. A. G. 32.)

For the same reasons the Chesapeake was held to be within the United States by the Court of Commissioners of Alabama Claims.

> Considering, therefore, the importance of the question, the configuration of Chesapeake Bay, the fact that its headlands are well marked and but twelve miles apart, that it and its tributaries are wholly within our own territory, that the boundary lines of adjacent States encompass it; that from the earliest history of the country it has been claimed to be territorial waters, and that the claim has never been questioned; that it can not become the pathway from one nation to another; and remembering the doctrines of the recognized authorities upon international law, as well as the holdings of the English courts as to the Bristol Channel and Conception Bay, and bearing in mind the matter of the brig *Grange* and the position taken by the Government as to Delaware Bay, we are forced to the conclusion that Chesapeake Bay must be held to be wholly within the territorial jurisdiction and authority of the Government of the United States and no part of the "high seas" within the meaning of the term as used in section 5 of the act of June 5, 1872.
>
> *Stetson* v. *United States*, 32 Alb. Law Journal, p. 484.
>
> 1 Moore, Int. Law Dig., p. 741–742.
>
> Moore, Int. Arbitrations, IV, 4332–4341.

These cases, as well as those of the Bristol Channel and Conception Bay, show conclusively that the

headland principle has no relation whatever to mere sinuosities and indentations. It is confined either to the mouths of tributary streams or to landlocked harbors or bays inclosed and defined by well-marked headlands. (*Direct U. S. Cable Co.* v. *Ang.-Am. Tel. Co.*, L. R., 2 App. Cas. 394, 418.) This is, indeed, necessarily imported by the recognized term "*fauces terrae.*" The waters claimed as territorial must be held, as it were, in the jaws of the land.

When the principle is sought to be extended to waters other than tributary streams, the actual configuration and dimensions of the waters claimed must be looked at to determine whether or not they can be truly said to be inclosed within the claiming State. It will be found in fact that nearly all of the bays across which boundary lines have been permitted to run from headland to headland are formed by the mouths of one or more tributary streams. Indeed, the physical situation makes it impossible, *in any case of a boundary on a river*, to draw a headland line except across the mouth of a confluent or tributary stream. For, on rivers, there are, generally speaking no bays.

III. BATTERY COVE A PART OF THE OPEN RIVER.

The distinction is illustrated by the very locality in question. Jones Point, if it be a headland at all, is a headland of Hunting Creek, the opposite bluff being the other. A boundary might very well run from one of these headlands to the other across the mouth of Hunting Creek. *But Jones Point is not a*

headland to a mere curve or indentation in the shore, such as Battery Cove.

Could it be fairly said, even when the point at the north end was natural, that all the water extending from there to Jones Point, with the indentation called Battery Cove, was inclosed within the territory of Virginia? Clearly this part of the river is not landlocked. Its waters do not thrust themselves into the territory of Virginia in such a way as to give access to her interior unless a line be drawn across the mouth.

> How is it to be considered as interior? It is quite open and patent to the sea. There are no headlands which shoot beyond, so as to make what are called chambers, no shores projecting *extra*. (*The Twee Gebroeders*, 3 Rob. (Adm.) 336, 341.)

In fact, it has no mouth, no *fauces terrae*, and its waters are not to be distinguished from the general body of the Potomac. Obviously, the so-called cove is merely a part of the marginal waters. In every case where a boundary is permitted to be drawn from headland to headland the waters are physically inclosed within the State. In a case such as this they are merely adjacent to the State.

But should we concede its validity in general, an attempt to apply the headland doctrine to mere indentations of a river shore presents such difficulties as to be, in effect, impossible. How far, for example, might the beginning and the end of the indentation be apart? What would be the result where there

is a double bend in the river, each bordering State having a promontory or headland jutting into a cove inclosed by headlands on the opposite shore?

IV. AN ARTIFICIAL EXTENSION IS NOT A HEADLAND.

Even if we should accept the headland doctrine in relation to rivers, there is an insuperable difficulty in the way of applying that doctrine to this case.

What is claimed for the northern terminus of the straight line, viz, Lumley Point, has been artificially extended by filling for a considerable distance into the river. (R. 8.) If Virginia has, as defendant claims, a right to make artificial extensions at will, and if the boundary runs in straight lines between headlands so made, the obvious result would be this—the undoubted dominion and ownership of the river possessed by the United States could be nibbled away, bit by bit, each encroachment by filling into the water at one point resulting in the drawing of a new straight line by which an additional area of water would be withdrawn from the jurisdiction of the acknowledged owner of the stream.

It would be no answer to this to say: "We do not claim a line drawn from Lumley Point as extended, but from Lumley Point as it formerly existed," For a headland call is *a call for a natural, existing object*—something by which it can be determined whether other objects, such as vessels or the like, fall within or without the limits of the bordering State.

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An object which has ceased to exist does not aaswer such a call. It is not feasible to have an ideal line across moving waters run from an obliterated point, the location of which can be discovered only through borings or similar tests made by expert topographical engineers, or by studiously comparing data to be found only in rare maps, with the latest survey of the existing physical situation. A headland call must be gratified by an open, definite, permanent, visible object, or it is nothing.

V. LUMLEY POINT NEVER AN EXTREMITY OF BATTERY COVE.

Defendant's claim for a headland line from Jones Point to Point Lumley (Duke Street) proceeds upon an assumption of fact not borne out by the proof. *These points have never been the extremities of an indentation comprising Battery Cove.*

The earliest plat we have (Ex. 9), is a tracing of a map made from a plat now lost, indicating the lines of the Howsing patent of February 26, 1668. It shows (*a*) that Hunting Creek was the only inclosed body of water in this region, (*b*) that what is now called Battery Cove was but one of many minor indentations along the river shore, and (*c*) that it lay not between Jones Point (Piper's Island) and Point Lumley, as defendant says (Br. p. 18), but between Jones Point and an intermediate point in the line of the present Franklin Street. Between the last-mentioned point and Point Lumley was a second indentation, and between Point Lumley and Point West was a third.

Nor, despite the extensive filling done there, did Lumley Point ever come to inclose Battery Cove. The map of Alexandria in 1798 (Ex. 14) shows that the eastern end of Franklin Street then extended *farther* into the river than Point Lumley, and their relative positions were practically unchanged when the improvement began. If, by some stretch of the imagination, Battery Cove is to be regarded as land-locked, its extremities are Jones Point and the point at Franklin Street.

Defendant's straight line would have to run, if at all, between these points, leaving much of the *locus* still in the District.

But Jones Point itself has been made by connecting the original Pipers Island with the mainland, and the point at Franklin Street, like Point Lumley, has been much extended by filling. (Rec. 8.) Therefore, Battery Cove, as it existed in 1910, was not a natural curve in the shore, but one which, slight as it was, had been created largely by artificial means. And Exhibit B, which enables us to compare the shore line just before the improvement with the shore line of 1845, as delineated on Exhibit 7, shows much of this extension of Franklin Street to have been made since that date. None of these points, then, is a natural promontory or headland. Facts like these demonstrate how preposterous it would be to run a headland line from an artificially created point which masks the obliterated natural shore line a long way inland.

Whether we regard Lumley Point at Duke Street or the point at Franklin Street intermediate between it and Jones Point as the northern terminus of the indentation we are confronted with the same difficulty. The existing point in present contact with the water can not be taken, **because it is an artificially created point and not a headland.** The old and obliterated point, now some distance inland, can not be taken **because, if ever a headland, it is one no longer.**

VI. HEADLAND BOUNDARY INCONSISTENT WITH OWNERSHIP OF THE WHOLE RIVER.

This is a fundamental reason against defendant's contention. Whatever may be its effect on the question of the high-water or low-water line, the compact contains not a word indicating an intention to take away the property and dominion of the river itself expressly granted by the Maryland charter. The words of that charter carry ownership to the water's edge on whatever acclivity or shore contains the stream and means that both the waters and the bed on which they flow are the property of the grantee. (*Alabama* v. *Georgia*, 23 How. 505, 514.)

As the grantee's successor, the United States is similarly entitled to the whole of the Potomac. Virginia is only entitled to what is not part of the Potomac. Tributary streams arising in Virginia, so far as they continue recognizable as such, are not part of the Potomac. Above the headlands which form their mouths, they constitute part of Virginia.

But the waters of the Potomac itself are not part of Virginia and it makes no difference whether the "farther bank" which holds these waters be straight or curved. The river is a definite thing and it belongs to the United States.

If this ownership were affected by the curvature of the containing land, then it is conceivable that the United States might lose its ownership of the bed of the channel of the river. For the channel is sometimes on one side, and sometimes on another, and a bend in the Virginia shore, where the bank is sheer, might, for instance, bring the channel itself within a line drawn from headland to headland.

VII. THE AWARD OF 1878 THE SOLE SOURCE OF DEFENDANT'S CLAIM.

It will be found, we submit, that from no point of view is it possible to apply a headland-to-headland theory to the present state of facts, where one bordering State owns the whole of the river and the boundary is to follow the farther bank thereof. The attempt to apply it is simply *an attempt to apply the Maryland-Virginia line established by the award of 1878*, which has nothing whatever to do with the boundary between Virginia and the District, is purely conventional, and does not purport to be the boundary called for by the charter.

It is solely from that award that defendant derives its notion that the water line on the Virginia shore, to which our dominion and property extend, should be measured "from low-water mark at one headland

to low water at another, without following indentations, bays, creeks, inlets, or affluent rivers." (R. 64.) And its only conceivable basis is the erroneous assumption made in the award that the territorial rights of the parties are to be determined not by the charter line, but by the extent of the wharfing privileges conceded by the compact of 1785.

The unwarrantable translation of such privileges into territorial dominion, while it would result in leaving the boundary line open to perpetual change, would yet accomplish, in a rough way, what the headland notion does. It would carry Virginia, *in posse* if not *in esse*, to the line of the channel; just as lines from headland to headland on a river would be equivalent, in large measure, to a line drawn along the channel.

The headland notion is thus an indirect device for giving Virginia territorial dominion to the channel, but the compact had no such purpose.

EIGHTH POINT.

Domestic statutes of Virginia, authorizing extensions of the city of Alexandria, do not have the effect of making a new interstate boundary.

In Section V of the stipulation (R. pp. 68–77), the defendant put in nine acts of the Virginia Assembly which are claimed to have the effect of extending the limits of the city of Alexandria to a straight line drawn in the Potomac from Jones Point northward in such manner as to make such line the boundary between Virginia and the District.

These acts, which range in date from the year 1772 to 1871, naturally fall into three classes:

(1) Acts passed before the cession.

(2) Acts passed after the cession, but before the organization of the District, while the provision of the Virginia cession continuing "the jurisdiction of the laws of this Commonwealth over the persons and property of individuals" remained in force.

(3) Acts passed after the retrocession to Virginia.

(A) We challenge the construction defendant places upon these acts. But it is manifest that, conceding it, they can not have the effect claimed for them.

I. With respect to those passed *before the cession*, viz, shortly before, during, and after the Revolution, the circumstance that Maryland did not take notice of these domestic, intraterritorial statutes can not be deemed an acquiescence in the claims they imply, especially when we remember that as soon as Virginia, in her constitution of 1776, made an open, public declaration of her claims on the Potomac, Maryland at once emphatically and solemnly repudiated them. (R. 14–15.)

Nor can an acquiescence in Virginia's claims be deduced from Maryland's having failed, during that time of stress, to prevent by force of arms the filling in of a block or two along the Virginia shore as an addition to the town of Alexandria. While the land so made, regarded as an accomplished fact, may be treated as having become part of the soil of Virginia (the boundary at that particular point thereafter

running with the new water line thus formed), Maryland's failure to prevent that ***one encroachment*** can not be deemed, in the face of her express denial of Virginia's right to make it, a concession of a general right to make similar encroachments without limit in the future. Giving the fullest effect to the actual adverse occupancy by Virginia of the particular land thus made, there is not, as to the rest of the river not so filled in and occupied, "that long acquiescence in the *practical* locating of a common boundary and *possession* in accordance therewith, which in some of the cases has been treated as an aid in settling the question at best." (*Arkansas* v. *Tennessee*, 246 U. S. 158, 172.)

These considerations would seem to dispose of the first three of the acts offered, those of 1772, 1782, and 1785. (R. pp. 69–72.)

II. We pass now to a consideration of what was done ***after the cession.*** Several important things must be borne in mind.

After the cession, the sovereignty of the land on both sides of the river, as well as the river itself, was in the United States. Whatever power the Assembly of Virginia had to legislate with respect to so much of the territory as had been ceded by her was limited, just as in the case of the Maryland Assembly, by the act of cession to laws "over the persons and property of individuals residing within the limits of the cession aforesaid."

This meant no more "than to say that the laws which affect private rights should continue in force

until proper provision was made by Congress." It had no application whatever to property held by the sovereign, or to matters of public law."

Morris v. *United States*, 174 U. S. 196, 241.

Shoemaker v. *United States*, 147 U. S. 282, 307.

Inasmuch as, by the acts of cession, the dominion and property of the whole river, including its bed, were vested in the United States, they could not be affected by any law thereafter passed by the Assembly of Virginia. Nor could anything be done by Virginia to impair any rights which the United States had acquired by the cession from Maryland. Moreover, the temporary continuance of Virginia law, for whatsoever purpose, was expressly confined to the limits of the territory ceded by her. It could not extend over territory which the United States obtained, not from her but from Maryland.

After the cession there was in fact no boundary to be changed or affected by the act of either State. So much for the Virginia acts passed during the period before the actual removal of the seat of government. It will be convenient here to say a word as to certain legislation after that date.

When Congress, by the act of 1801, organized the District, it placed the river in both counties. (Rec. 19.) Thereafter all legislation relating to the corporation of Alexandria, as well as that relating to the corporation of Washington, derived its authority from the United States. Any act affecting the

river, therefore, in so far as it is valid at all, acquires its validity from the express or implied consent of the United States. To put the matter concretely, if the corporation of Alexandria between the cession and the retrocession authorized land to be filled in along its water front, whatever was thereby validly accomplished is the result of congressional authority and is therefore not adverse to any right claimed or possessed by the United States, either as the successor of Maryland or as the successor of Virginia. Acts thus done by the consent of Congress while sovereign of both shores imply no right to do similar acts after Congress, by retrocession to Virginia, reestablished a boundary between the two sovereignties and held the river by its Maryland title.

In fine, statutes and ordinances, such as the act of 1798, passed during the period of single sovereignty, are without significance in respect of questions which can only exist when sovereignty is separated. Acquiescence by Congress in the city limits claimed by Alexandria while the river was in both counties is without weight on the question of interstate boundary.

III. What was said respecting the statutes passed during the period before the cession applies equally well to those **passed after the retrocession.**

It may be fully conceded that where the opposite sovereign, under a claim to improve or extend to low-water mark, does in fact fill in land to that line and exercise unquestioned dominion over it for a

long period of time, the particular land actually so made may be regarded *pro tanto* as withdrawn from the river and a new boundary around that land may be taken as established by acquiescence. (*Indiana* v. *Kentucky*, 136 U. S. 479, 510.) But it **does not follow** that failure to prevent such action in a particular instance and at a particular place amounts to **an acknowledgment of the right of engaging in such action in general,** or to a concession of a similar boundary **in other places.** It is the fact of occupancy, and not the claim, which works the change. (*Arkansas* v. *Tennessee*, 246 U. S. 158, 172.)

Such a result would not follow from a mere paper claim to have jurisdiction down to an imaginary line on the water and to fill in accordingly. Against such a claim the legal title must prevail. The opposite sovereign, having and asserting that legal title, would not be concluded by a domestic, internal, municipal statute declaring that the limits of a subsidiary political division should extend on paper outside of the true interstate boundary. If, then, the acts of 1860 and 1865 really say that the eastern limit of the city of Alexandria shall be an imaginary straight line from Jones Point to Four Mile Run, such imaginary line does not become a substitute for the true charter boundary which calls for the high-water mark. The Virginia acts of 1860 and 1865, conceding the construction placed upon them, are wholly without bearing on the present controversy.

(B) *None of the statutes offered admits of the construction claimed.*

It is easy to make a general claim that these statutes evidence acts of proprietary right, jurisdiction, and possession over the soil in question. But the claim will not bear analysis.

(*a*) The first is the act of 1772. (R. 69–71.) Reciting that certain marsh land constituting, under former acts, an addition to the town of Alexandria had been left undrained and unimproved, this act provides simply that the owners of such marsh lots must drain the same within two years under penalty of forfeiture. Its only other provision is to vest the wharf at Point West in the trustees of the city and to confer upon them the power to take wharfage. It does not touch the area in question. Obviously, there is nothing in this act of which Maryland was required to take notice, nor is there anything in its execution which she was required to prevent. It is wholly without significance upon the question of boundary.

The second act is that of October, 1779. (R. 71, par. *b*.)

This act is but a supplement to the former. It seeks to accomplish two objects: First, to supply a want of power in the town trustees to enforce the forfeitures of lots in Alexandria's subdivision occasioned by breach of the condition to build thereon within two years, such breaches being due, the act says, to "the great scarcity and difficulty of procuring materials * * * during the present war

with Great Britain." The act gives the purchasers a further period of two years.

(*c*) We come next to the act of 1782. (Rec. 72, par. *c*.)

It, also, is confined to two provisions. The first empowers the mayor and corporation to lay a wharfage tax at the wharf belonging to the town, and to apply the money arising therefrom to the use of the town. The second authorizes the extension of Water Street and Union Street. This extension was, in fact, made. Upon the principle already stated, the land so made, which is an integral part of the city of Alexandria, built upon, occupied, and governed as such, for more than a hundred years, must now be regarded as a portion of the territory of Virginia. But the fact that the assembly authorized a subordinate political division of its own Commonwealth to take this step can not be regarded as establishing a right to do the like in the future. Virginia passed this domestic act, after the public declaration of Maryland, made in reply to the assertion of a Virginia right in the river, that—

> the sole and exclusive jurisdiction over the said river Patowmack, * * * belongs to this State,

and that—

> the State of Virginia hath not any right or title to any of the territory, bays, rivers, or waters, included in the charter granted * * * to Caecilius Calvert, baron of Baltimore. (Rec. 14–15.)

(*d*) The fourth act is that of October, 1785 (R. 72, par. d.)

This is the first act that expressly extends the limits of the city. It being desirable, the act points out, for "the ornament of the town * * * as well as the convenience and health of the inhabitants thereof" that the streets be laid off and extended in a regular and uniform manner, and that the territory adjacent to it should be regulated, a "district round the town" is declared to be subject to regulation by the authorities of the city whenever the proprietors of the lands therein incline to open them up. It is a sort of highway-extension plan. The boundary of the district thus conditionally added, however, begins at the bank of Great Hunting Creek, runs in a straight line parallel with the north and south axis of the city, at a distance inland of one mile from the courthouse, to Four-Mile Run, thence down the run to its confluence with the Potomac, thence southwardly to the mouth of Great Hunting Creek and up the creek to the beginning. While the inland line from Great Hunting Creek to Four-Mile Run is a straight line parallel with Fairfax Street, the line called for from the confluence of Four-Mile Run and the Potomac River "southwardly down the said river to the mouth of Great Hunting Creek" is not a straight line. On the contrary, the call is entirely gratified by a line running along the shore between those two points. (*Brown* v. *Huger*, 21 How. 305, 320. *Rogers* v. *Mabe*, 15 N. C. 180, 194. *Smith* v. *Auldridge*, 2

Hayw. 382.) This statute is not even a paper claim to extend Alexandria into the Potomac. This conclusion is confirmed by the direction given for the extension of the streets. The north and south streets are directed to be extended—

> * * * southwardly to Potowmack River or Great Hunting Creek, as the case may be, and northwardly to Potowmack River, or Four-Mile Run, as the case may require. (R. 73.)

If the eastern boundary had been a straight line from Four-Mile Run to Great Hunting Creek, the *north and south* streets could terminate only in the creek or the run, and not in the river at all. The fact that such streets are to be extended to the creek *or the river*, or to the run *or the river*, shows conclusively that they stop when they strike the incurving shore of the river and that the eastern limit of the city is the actual meander line between land and water.

(*e*) The next act to be considered is that of January 8, 1798. (R. 74.)

This extends jurisdiction of the city officers to vessels lying at a wharf "projecting from the said town" and also to vessels made fast to other vessels lying at a wharf or in the dock or the waters within the wharf. These provisions would seem to be inconsistent with the claim that the prior act had extended the city to a straight line from Four-Mile Run to Great Hunting Creek, for in that case all waters within the wharves would have been already

inclosed by such a line. It is quite plain, also, that the framers of this act regarded the town as something different from "the wharves projecting *from* the town." This act, itself, does not purport to extend jurisdiction over all waters included by a straight line between the points named, but only to vessels lying at a wharf or in a dock or within the waters inclosed by a wharf. ***Nor, indeed, does the act purport to touch the soil or any fixed object within the water line.*** It relates only to floating objects for the time being connected with the wharves of the town. (*Roberts* v. *Fullerton*, 117 Wis. 222, 226.) As pointed out above, this act was passed after the cession to the United States under the provision which continued temporarily "the jurisdiction of the laws of this Commonwealth over the persons and property of individuals" within the territory ceded. Neither it nor any other act could affect the property or impair the rights of the United States acquired by the Maryland cession. Nor could it change the public law. Any effect it may have in the domain of jurisdiction must be ascribed to the consent of that Government which, at that time, possessed the sovereignty over both shores of the river, and can not be taken to diminish or impair that sovereign's rights and jurisdiction.

(*f*) The defendant next offers a series of acts passed respectively in 1852, 1853, 1858, 1860, 1865, and 1871, amending the charter of Alexandria and extending and redefining its limits.

The first two acts (R., 102–103) make extensions of the city to the north and are not concerned with the *locus*. The act of 1860 is the one upon which defendant appears chiefly to rely. This act describes the limits of the city as "Beginning on the Potomac River, at a point distant northerly in the direction of Fairfax Street, five hundred and ninety-five feet nine inches from the north line of Montgomery Street, as now established in said city, and extended into said river," thence, by certain courses, around the northern and western boundaries of the city to the line between Alexandria and Fairfax Counties (the old District line), "thence southeasterly, along said line, into the Potomac River," and thence "up said river to the beginning." (R., 75.) The same language is repeated in the act of 1865. (R., 76.) The construction placed upon these words by the defendant is that "up said river to the beginning" means "up said river *by a straight line* to the beginning." Such, we submit, is neither the natural nor the technical construction of such a call. "Up said river to the beginning" means no more than "along," "with," or "by said river to the beginning." The word "up" is used to indicate the direction. In all other respects it is precisely equivalent to "along," "with," or "by." and runs with the meander line. Such is the construction which would be placed upon any deed with a similar call. (*Rogers* v. *Mabe*, 15 N. C. 180, 194; *Buckley* v. *Blackwell*, 10 Oh. 508, 510.)

And there is no assignable reason for giving the words a different meaning in this act, in which,

wherever a straight line is meant a straight line is called for. (Cf. *Thomas* v. *Godfrey*, 3 G. & J. 142, 152.) This call for the river side begins at one point on the river where it is intersected with the old District line. It ends at a similar point on the river 595 ft. 9 inches north of the line of Montgomery Street. The call between those points is "up the river." This is a clear case of a call for the actual course of the river between the points thus fixed. None of these acts can be construed as express and unequivocal claim to withdraw any defined part of the river from the dominion of the United States. Nor is there anything whatever to show acquiescence by the United States in such a pretension.

Most of these acts are substantially contemporaneous with the declaration by Congress in the first section of the Revised Statutes relating to the District of Columbia that the District—

> is that portion of the territory of the United States ceded by the State of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District and the islands therein. (R. 29.)

In the face of this enactment it is not clear how a court sitting for this District can give effect to an inconsistent claim on the part of Virginia to draw into the limits of one of its own towns a portion of that river in its course through the District.

At the worst, we have claim for claim, statute for statute. In such a conflict the legal title must control. *United States* v. *Texas*, 162 U. S. 1, 88–89.)

(*g*) In addition to the acts just considered, defendant offers an act passed by the Virginia Assembly in 1848 respecting the Alexandria Canal Company. The only provisions which would seem to be at all germane to the discussion are these:

Section 1 gives the company authority—

> * * * to construct such wharves, piers, basins, and other works on the Potomac River, at or near their present outlet locks, as they may deem necessary and proper for the accommodation of the trade of their canal.

Section 2 confirms the company—

> * * * in the full use and enjoyment of the right and title to, all real property hitherto conveyed to or acquired by them.

It also authorizes them to accept a conveyance of the—

> * * * privileges and other things now held by George H. Smoot for said company, at and near the Georgetown ferry.

Section 4 authorizes them—

> * * * to contract and agree for the purchase of all lands * * * necessary * * * to construct any of the works mentioned in the first section of this act; and also all land necessary and convenient for coal depots not exceeding 5 acres. (Rec. 77.)

The argument is that Virginia's granting authority "to construct wharves, piers, basins, and other works on the Potomac" is incompatible with ownership and jurisdiction in the United States up to high-

water mark. If so, is it not equally incompatible with ownership and jurisdiction up to low-water mark, or, indeed, with ownership and jurisdiction beyond the line of the channel? At all events, the force of this argument must be measured by the degree to which the United States, as owner up to high-water mark, was called upon to oppose, or at least to protest against, the claim supposed to be implied in the Virginia statute. Now, in fact, nothing whatever was being done by Virginia which was incompatible with the interests and purposes of the United States as owner of the river up to high-water mark.

Eighteen years prior to this act, while the county and city of Alexandria were still within the District, Congress had incorporated the Alexandria Canal Company and empowered it—

> * * * to cut canals, erect dams, open feeders, construct locks, and perform such other works as they shall judge necessary and expedient for completing a canal, from the termination or other point on the Chesapeake and Ohio Canal, to such place in the town of Alexandria as the board of directors shall appoint. Act of May 26, 1830, c. 104 (6 Stat. 419).

The corporation was given the power to agree with the owners "for the purchase or use and occupation" of whatever land was needed for the canal or any of its appurtenant works, including "the land necessary for the construction of a basin at the

termination of said canal at Alexandria." Wherever agreement was impossible, the company was authorized to condemn by means of an inquest conducted by the marshal of the District of Columbia. (Sec. 13.)

In respect of the construction of the canal the company's powers extended as well to "any of the works thereof, locks, dams, ponds, feeders, tunnels, aqueducts, bridges, or works of any other description whatsoever appurtenant thereto." Under these powers the company did, in fact, construct an aqueduct on piers across the Potomac River, as well as a terminal basin and outlet locks at Alexandria.

Thus the company already had the authority of Congress to accomplish the objects of its creation by the construction of appurtenant works of any kind that it might deem expedient. How, then, can an act confirming the company in the property thus acquired and authorizing it to construct further works necessary and proper for the accommodation of its trade, be construed as the assertion of anything inconsistent with the rights and interests of the United States?

The simple fact is that the retrocession had placed the company in the position of a foreign corporation, and its power to acquire or condemn land, being limited in terms to the District of Columbia, was no longer applicable to the area which, by the retrocession, had become a part of Virginia. It was perfectly natural that the Virginia Assembly, called

upon to pass an act making the company's power applicable to that area, should also confirm its title to real property theretofore acquired and authorize it to do the things proposed, although they were clearly within the scope of the congressional authority it already possessed.

This legislation asserted nothing adverse to the United States. Nor was the United States called upon, under penalty of an unfavorable inference, to prevent the consummation of what it had itself desired and authorized the company to do. Such an inference could only be drawn in the event that Virginia authorized the company to do something which Congress had forbidden, or at least not authorized, it to do. Clearly, Virginia had done nothing of the kind.

In *Georgetown* v. *Alexandria Canal Company* (12 Pet. 91) it was urged that the execution of the canal company's powers under the act of May 26, 1830, would infringe the rights secured by the compact of 1785. It was in reply to this that this court held that, notwithstanding the compact, Congress had the power to make any improvement it chose, "either by canals along the margin of the river, or by bridges or aqueducts across it, or in any other manner whatsoever." It was the execution of that power which Congress had validly delegated to the Alexandria Canal Company.

NINTH POINT.

Defendant has not shown any such long-continued possession of and exercise of dominion and sovereignty over the area in controversy as would be equivalent to the location by acquiescence of a common boundary line transferring that area to Virginia.

The facts already discussed, especially under the second and eighth points, would seem to render extended argument under this head unnecessary. It is important to observe, however, that in dealing with this subject defendant blends together two questions which are fundamentally distinct, viz:

(1) Whether there is proof of any such long-continued actual occupation of, and exercise of sovereignty over, the area in suit as would be tantamount to acquiescence in the location of a new boundary line placing it in Virginia.

(2) Whether the United States and its predecessors in title have acquiesced in the general claim put forward on behalf of Virginia that her territorial boundary extends on this part of the Potomac to lines drawn from headland to headland at low-water mark and, *consequently*, includes the area in suit.

I. NO ACTUAL ADVERSE OCCUPANCY OF THE AREA.

There is no evidence whatever *of any actual occupation of the locus in quo* adverse to the title held by the United States, prior to the improvement begun by the Government in 1910. Throughout the entire history of the river down to that date,

the area in dispute was an open and obvious part of the stream, and the land within it was parcel of the river bed. Compare Ex. 14 [1798], Ex. 2 [1804], Ex. 7 [1845], and Ex. 4 [1908]. The United States had all the possession of which the soil, as river bed, was susceptible. The record presents none of the elements found in the cases of land boundary where the prescriptive principle has been applied. We have not, for example, any boundary line "run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years," to bring it within the rule of cases like *Virginia* v. *Tennessee* (148 U. S. 503, 523).

It may be appropriate here to notice sundry conveyances offered by defendant on the trial of the general issue. Between 1789 and 1798 William Thornton Alexander (under whom defendant claims) conveyed, with reservation of annual rents in perpetuity, several lots in the neighborhood of Franklin Street, by descriptions of which the following is a type:

> Beginning upon the north side of Franklin St. 205 ft. to the eastward of the east line of Union Street and extending from thence eastwardly with Franklin Street *into the River Potomac*, and *returning* from thence again *to the place of beginning*, and running thence northwardly with a line parallel to Union Street 93 ft., 3½ in., thence eastwardly with a line parallel to Franklin St., *into the River Potomack;* thence with a line parallel to Union

> St., southwardly till it intersects the line of Franklin St., and all houses, buildings, streets, lanes, etc. (R. 122–3.)

Note that the side lines are described as running from fixed points on fast land *into the river*, but no distance or terminus is stated. The river line which is to connect these side lines has no defined position. Defendant's theory is that this amounts to a claim of ownership in the bed of the river *ex adverso* the Virginia shore as far as an ideal straight line extending from headland to headland, i. e., from Jones Point to Point Lumley, or to some other point. But there is no evidence of any possession corresponding to that. Nor is there any evidence that such ideal line would be "parallel to Union Street." The deed, moreover, does not bear any such construction. To run a boundary line *into* the river without specifying any distance is no more than to run it *to* the river. The physical object mentioned, the river, necessarily constitutes the call, and the next line runs with the river.

This view is corroborated by the fact that, when Alexander in 1806 conveyed the reversion and rents in the same lots, he bounded his entire tenement as follows:

> "Beginning at the intersection of Fayette and King Streets, thence along Fayette Street to Hunting Creek, thence down the several meanders of Hunting Creek to the River Potomac, thence *down the several meanders of the said river* to King Street, and thence up King Street to the beginning." (R., 125.)

The language used in the previous ground-rent conveyances seems to have been adopted with a view to the use of the shore as a wharf. This is borne out by the subsequent conveyances.

In asserting its ownership and jurisdiction of the river bed, on which the land in dispute has been raised, the United States permits full effect to be given to any actual possession under these conveyances. Whatever land has been made, and whatever wharves have been constructed, by virtue of these deeds, remain undisturbed. A large part, if not the whole, of defendant's so-called upland is land thus made. [Compare the 1845 line and the 1910 line shown on Ex. B.] But no further possession or occupation is shown. That, we submit, is a complete answer, even if defendant's contention were correct. Running imaginary lines into a stream *is not a mode of taking possession* of the bed and soil of a public navigable river.

II. NO ACQUIESCENCE IN THE SUBSTITUTION OF A STRAIGHT-LINE BOUNDARY.

We pass to the question of the supposed acquiescence by the United States, and its predecessors in title, in a boundary claimed to run in straight lines drawn from point to point at low-water mark.

Manifestly this is a different question. It applies not merely to the *locus*, but to the whole stretch of the river from Chain Bridge to Jones Point. This contention is altogether modern and dates only from the period of the arbitration of 1878. When, in 1776, Virginia made her first public statement of her claim,

she spoke only of shores or strands and improvements made, or which shall be made thereon. (R. 14.) As already shown, this claim was at once repudiated by Maryland. (R. 15.)

Nor does the compact of 1785 give evidence of any such pretension. It provides that the citizens shall have full property in the *shores adjoining their lands.* Nothing is said about a headland line or bays, coves, or other indentations. Even as to the shores, defendant is mistaken in construing the compact as a recognition of a preexisting right. On the contrary, its language is *prospective* and its operation *contractual.* "The citizens shall have, etc." And, as the Court of Appeals said, it was a contract never operative as to the District.

We have already discussed the statutes relied on as showing a claim of jurisdiction by Alexandria over a portion of the river, and as well the statutes which show, on the other hand, that the United States has continually claimed the entire river in its course through the District in the same manner as the Proprietary had insisted that "the whole river Potomack is within the limits of Maryland as described in the royal charter." (R. 13.) Nor does there seem to be any occasion for repeating the discussion as to the effect of the filling done along the city front, principally in the eighteenth century between Point West and Point Lumley (Duke Street). All of the land so made is left untouched by this suit. Full effect may be given to such encroachments as accomplished facts, but they can not

impair the Federal right to control the improvement of the river, nor are they evidence of acquiescence in a general right to make such fills between any other chosen points.

We come now to the actual exercise of jurisdiction over *the river and its submerged soil.*

There are three ways in which one would naturally expect to find such jurisdiction exercised: (1) By police of the waters and protection of the fisheries. (2) By taxation of physical objects affixed to the soil of the river bed. (3) By the execution of legal process. Under each of these heads there would seem to be evidence sufficient to dispose of the theory of acquiescence.

(1) Under the first head, it is necessary only to invite the court's attention to the statutes enacted by Congress for the protection of the waters of the Potomac (R. 29–31), and to the series of fishery cases summarized in the record, pages 86 to 89, in one of which (R. 89) the jurisdiction exercised to high-water mark was contested before the Court of Appeals. Compare the Maryland act of June 22, 1768. (R. 14.) Defendant seeks to offset this by evidence that refuse from the Alexandria gas works and a fertilizer and chemical plant there has been emptied without objection into the river. (R. 85.) But we show that in both cases the waste referred to is not deleterious to fish or otherwise. (R. 90.) All this is but an instance of that innocent use of waters which the owner of a boundary river would not think of denying to the opposite State. But what

defendant has undertaken to prove is continued acquiescence in an exclusive *territorial* jurisdiction altering the charter line.

(2) In respect of jurisdiction over fixed objects, we have the history of the Long Bridge and the Acqueduct Bridge. (R. 21–28.) Defendant seems to think (brief, p. 48) that this evidence is met by saying that, independently of cession from either State, Congress, under the commerce clause, would have power to *authorize* the construction of bridges across a navigable stream. True. But that would not give it power to deal with the matter of the structure's territorial *situs*. When the Acqueduct Bridge *up to high-water mark* on the Virginia side was taxed by the authorities of the District, and the assessment judicially sustained (R. 27), that was an exercise of territorial dominion and sovereignty up to the line stated. (*Henderson Bridge Co.* v. *Henderson City*, 173 U. S. 592, 613.)

(3) With respect to the execution of process and the general exercise of police power, we have the significant fact that the District of Columbia does, while the city of Alexandria does not, maintain a boat or vessel for harbor police on the Potomac, and we find that persons accused of crime, arrested on request by the Alexandria police on the docking there of a boat coming from Washington, have been turned over to our harbor police without extradition or removal proceedings. (R. 91.) It may be noted also that bars on the ferry boats, while in the ferry slip at Alexandria, have been kept closed

in obedience to the excise laws of the District. (R. 89.)

Considering that defendant has the burden of proving a total alteration in an established legal boundary, it would seem that its evidence is quite insufficient. The boundaries of States are not lightly altered. Defendant has shown neither actual adverse occupation of the *locus in quo*, nor acquiescence by word or deed in a claim to draw a boundary different from that established by the charter.

It is submitted that defendant failed to maintain its plea to the jurisdiction. We pass next to a consideration of the questions arising under the general issue plea.

Part Two.

THE QUESTION OF TITLE.

The *locus* having been shown to be within the limits of the District, the Government's title to it would seem to follow as a necessary consequence. Since the dominion and jurisdiction of the United States extend to high-water mark on the Virginia shore of the river, so must its ownership of the soil under the river. For the rights are coextensive and depend upon the same title. From this it follows that:

TENTH POINT.

The United States, being owner of the soil of the river, remains owner of the land lawfully reclaimed upon it.

The title of the lord proprietary, which has here devolved upon the United States as the exclusive

territorial sovereign of the District, is, like the title of the Crown in tidal rivers in England, an absolute right of property in the soil up to high-water mark. It includes the *jus privatum* as well as the *jus regium;* ownership as well as dominion and jurisdiction. In other words, the United States is seized as of fee, in right of its sovereignty, of and in the bed and shores of the Potomac River to the ordinary high-water mark on each shore thereof.

Morris v. *United States*, 174 U. S. 196, 227.
Cropley v. *District*, 23 App. D. C. 232, 244.
Shively v. *Bowlby*, 152 U. S. 1, 11.
Hale, *de Jure Maris*, c. VI.

It follows of necessity, upon a principle implicitly conceded by the defendant, that the United States, being the owner of the fee of the submerged soil, remains the owner of the fee of the soil reclaimed.

Barney v. *Keokuk*, 94 U. S. 324.
Haight v. *City of Keokuk*, 4 Iowa, 199.
Tomlin v. *Dubuque R. R. Co.*, 32 Iowa, 106.
Hoboken v. *Penn. Rd.*, 124 U. S. 656.
Stevens v. *Paterson & N. R. R. Co.*, 34 N. J. L. 532.
Sage v. *Mayor*, 154 N. Y. 61; 47 N. E. 1896.
Home, etc., v. *Commonwealth*, 202 Mass. 422; 89 N. E. 124.

The soil while submerged, like the waters flowing over it, was subject, of course, to the *jus publicum*, the public uses of navigation and fishery. But the protection of these public and common interests was also vested in the United States, which was the

sole judge of the manner in which the river and the soil thereof should be utilized for the promotion of commerce and navigation.

Greenleaf-Johnson L. Co. v. *Garrison*, 237 U. S. 251, 261.

United States v. *Chandler Dunbar Co.* 229 U. S. 53, 62.

As part of the improvement authorized by Congress, the area between the wall and the high-water line has been raised above the tide level and whatever navigation, if any, was ever possible in that portion of the river has been excluded in the interest of better navigation in the channel. (*South Carolina* v. *Georgia*, 93 U. S. 4, 11–17; *Scranton* v. *Wheeler*, 179 U. S. 141, 164.) But that circumstance did not operate to withdraw the area thus utilized from the paramount and exclusive control of the Government or to divest its absolute property in the soil.

Home v. *Commonwealth*, 202 Mass. 422, 429.

Sage v. *Mayor*, 154 N. Y. 61, 79.

Cobb v. *Lincoln Park Com.*, 202 Ill. 427.

Com. Lincoln Park v. *Fahrny*, 280 Ill. 256, 257.

Since the reclaimed area was lawfully raised upon the Government-owned bed and shore of the river within the territorial limits of the District, it can not be distinguished, in point of title and ownership, from the reclaimed flats of the Potomac, which, under the new name of Potomac Park, we have immediately before our eyes. (*Morris* v. *United States*, 174 U. S. 196, 227.)

ELEVENTH POINT.

The grants under which defendant claims the adjacent upland in Virginia carried no title or estate in the locus which, at their respective dates, was the bed of a navigable river in Maryland.

This proposition seems self-evident. Yet the defendant, notwithstanding the judgment on the jurisdiction plea that the land in question is in the District for the very reason that it was part of Maryland, sought, on the trial of the general issue, to deraign title to it under the same grants by which it claims the Virginia upland.

Defendant's upland title rests upon a grant made October 21, 1669, by the governor of Virginia, to Robert Howsing (R. 113), as confirmed by the Virginia act of 1748 (6 Hen. St. c. 55), in pursuance of Fairfax's consent that lands previously granted in the Northern Neck should be confirmed to the grantees, but were to be thenceforth held of him. (R. 114.)

(*a*) The reasons why the Howsing grant can not be a source of title to land in the river have already been given in the Second Point.

(*b*) The second source of defendant's title to its upland is the grant of the Northern Neck of Virginia made by James II to Thomas, Lord Culpeper, and afterwards vested in Lord Fairfax. (R. 114, par. c.)

It is the settled law of this jurisdiction, however, that the previous grant of the river to Lord Baltimore was not affected by the subsequent grant to Lord Culpeper. (*Morris* v. *United States*, 174 U. S. 196, 225.)

The Howsing grant and the Culpeper patent are the only sources of defendant's title. Though previously admitted on the question as to change of boundary, the court below was right in excluding them (R. 159, 161), so far as offered to show title to the *locus in quo;* and their exclusion necessarily required the exclusion of the Virginia act of 1748 (6 Hen. Stat., ch. 55, p. 198), offered to show that the Howsing grant, although within the Northern Neck previously patented to Hopton, had been validated by attornment to his successor, Lord Fairfax. (R. 160.) All that was too late to affect the established title under the Maryland charter.

With the fall of the Howsing grant and the Culpeper or Fairfax patent, fell, of necessity, all of the subsequent conveyances under which defendant traced back its upland title to those sources. However effectual in respect of the upland, they were one and all without effect so far as the *locus* is concerned, for the obvious reason that each of the successive grantors was a stranger to the title already vested in the Maryland proprietary, and therefore had nothing in the premises. (R. 163.)

Defendant complains of the ruling on these private conveyances on the ground that they might be considered in connection with its contention respecting change of boundary by long-continued possession under Virginia with the acquiescence of the opposite sovereign; but they were not offered on that issue. They were offered only after this area had been determined, on the jurisdiction plea, to be in the district,

and they were offered strictly to deraign a private title.

The trial was not before a jury, and all that defendant offered is spread at large on the record. The substantial inquiry is whether it is effectual to show title to this land as land in the District. Plainly, when fully considered, it is not effectual, for the grantors had no legal title, and title by adverse possession can not be acquired against the United States in respect of property held for the benefit of the public. Moreover, defendant showed no actual possession of the river soil constituting the *locus*.

TWELFTH POINT.

The compact of 1785 was not a grant of land from one of the contracting States to the citizens of the other.

Not succeeding in showing a title superior to that of Maryland, defendant's next effort was to break the chain of the Government's title by showing a prior estate in itself derived from the Maryland title. For this it went again to the compact of 1785.

I.

Defendant's contention seems to be that although the compact left the boundary unchanged, its sixth and seventh paragraphs operated as a grant from Maryland of the soil of the shores in front of the Virginia upland abutting on the river, with the privilege of carrying out wharves and other improvements so as not to obstruct or injure navigation. Defendant evinces some hesitancy in the precise formulation of

this proposition. At one place at least (R. 157) the statement is that there was "vested in the State of Virginia *and* her citizens full property in the shores of the Potomac River adjoining *their* lands." Manifestly, property in the sense claimed by defendant can not be vested both in the State of Virginia and in the individual landowners. The State and her citizens can not both be seized of the same soil. What defendant must mean is that the Virginia owners of the upland were vested by the compact with full property in the shores in front of their lands. For to admit that the compact operated between the States, as such, is to concede its character as an interstate treaty dependent for its existence upon the concurrent will of the two contracting sovereigns, and subject to be extinguished by their consolidation in a single successor. Defendant's proposition, therefore, is that these sections of the compact vested in each individual landowner a perpetual, indefeasible estate in the submerged bed of the river in front of his parcel of upland, although, as determined upon the plea to the jurisdiction, such submerged bed remained within the State of Maryland. In short, that the compact operated as a grant.

This contention is precisely the contrary of what defendant urged on the former plea. It then said that the compact changed the territorial boundary between the two high contracting parties, the States. It now says that the compact operated directly between the State of Maryland and certain

citizens of the other State, granting such individuals perpetual estates in Maryland soil.

This novel construction, moreover, is directly in the teeth of the construction placed upon the compact by this court as long ago as 1838.

It was then expressly held that the compact was made by the two States *in their character as States*, and that "the citizens, as such, individually, were in no just sense the parties to it." (*Mayor* v. *Alex. Canal Co.*, 12 Pet. 91, 96.)

And this court went on to show that as a necessary consequence of the very nature of the instrument—

> The same power which established it was competent either to annul or to modify it. Virginia and Maryland, then, if they had retained the portions of territory respectively belonging to them on the right and left banks of the Potomac, could have so far modified this compact as to have agreed to change any or all of its stipulations. They could, by their joint will, have made any improvement which they chose, either by canals along the margin of the river, or by bridges or aqueducts across it, or in any other manner whatsoever.

Since the compact thus rested solely upon the joint will of the two contracting States and was subject at any and all times to be abrogated by their joint act, how is it possible that it should have irrevocably conferred upon individual citizens of one of them perpetual estates in the soil of

the other? Could not this supposed "vested estate" have been annihilated at any moment by the joint act of the two sovereigns? Manifestly any privilege brought into being by the compact and existing solely by virtue of it could be extinguished by "the same power which established it."

It is impossible, then, to treat the compact, made by and existing only through the joint will of the two sovereign parties, as a grant of vested estates to the individual citizens of one of them. And, as pointed out by this court in the same case, as well as by the Court of Appeals in the *Evans case*, whatever the contracting parties, prior to the adoption of the Constitution and before the cession, could have done by their joint will, the United States, as the successor of both, could do by its sole will. It united in itself all the power over the compact which they had previously possessed in common, in addition to absolute and plenary power over commerce, and could make any utilization or improvement of the bed and margin of the river that seemed advisable.

Such being the case, it seems unnecessary to repeat the argument by which it is shown that the necessary consequence of this substitution of a single sovereign for the two original high contracting parties was to abrogate or dissolve the compact by terminating the *mutuus consensus* on which alone it rested. Hence, no vested or perpetual estate can be grounded upon it.

The utmost that can be said for the effect of the compact is that, so long as it remained in force by the consent of the two contracting States, the privileges described in the sixth and seventh paragraphs constituted an international servitude by convention in favor of Virginia in the territory of Maryland. Such a servitude or easement within the territorial limits of another State has nothing in common with seisin. Title remains unchanged. And this conventional State servitude ceased with the merger of the rights of both parties in their common successor and was not revived, expressly or by necessary implication, in any provision of the act of retrocession. (*Supra*, p. 73.)

II.

Defendant endeavors to escape from this difficulty by saying, "vested in the State in trust for her citizens." This does not mend matters. For this must mean either that the compact is with the State (as we insist) or else that it confers rights upon the citizens of Virginia which the two States could not alter by their joint will, which is to overrule (*Alexandria* v. *Mayor*).

It does not serve defendant's purpose to say that the fee simple is vested in the State, not only because of the fatal concession therein involved, but because the express words of the compact are that the *citizens* of each State, respectively, shall have full property in the shores adjoining *their* lands.

You can not ignore these plain words in order to confer a permanent, indefeasible estate upon another legal person. Nor can you seize upon them, ignoring everything else, in order to turn the compact into a grant, contrary to its essential nature, and in the teeth of binding authority expounding and declaring its effect.

Two points emerge, we think, from the embarrassment in which defendant finds itself.

First, that our conception of the compact serves as a solvent. The instrument is unquestionably a treaty and not a grant. Yet the benefits of the "full property," as therein stated, accrued to *the citizens* of Virginia but only so long as the treaty remains in force. The property is a servitude in Maryland soil, derogating to that extent from Maryland's continued ownership and sovereignty. It must therefore suffer the consequences of a servitude when the two sovereignties merged in one.

The second point made clear by defendant's difficulty in formulating its proposition is that its present contention about estates having vested in perpetuity involves, of necessity, a return to its former contention that the compact changed the boundary, and is, in truth, but an indirect way of asserting the same thing. Unless the compact changed the interstate territorial boundary, all argument that the fee simple of the river shores passed in perpetuity to Virginia or to certain Virginia landowners must end in confusion.

III.

It may be added that, even if we should concede to the Virginia landowners a perpetual "property in the shores adjoining their lands," such concession would avail the defendant but little. The term "shore" has a precise and settled legal meaning. It means the space between high-water and low-water mark which every day is left bare by the ebb and covered by the flood of the tide. (*Elliott* v. *Stewart*, 15 Oreg., 259; *Shively* v. *Bowlby*, 152 U. S., 1, 11; *Atty. Gen.* v. *Chambers*, 4 De G. M. & G., 206, 208.) The maps in evidence, especially Ex. B, show that only a small portion of the land reclaimed lies between the high and the low water mark. The greater part of it lies riverward of low-water mark and between it and the channel. Property in the shore manifestly would give no title to that.

In order to maintain a claim to the principal portion of the reclaimed area upon its new theory of the compact, the defendant has to go further and construe the words "with the privilege of carrying out wharves and other improvements" as vesting a fee simple estate in all of the submerged soil as far as the channel. And that, too, regardless of the question whether any wharf or improvement had ever been made or the privilege actually exercised. This interpretation, we submit, does manifest violence to the words of the compact and is contrary to the settled rules respecting the legal effect of such a privilege. The privilege of carrying out wharves, even

when conferred by the riparian owner's State in its proper river, is not construed as vesting a fee simple estate, but as conferring a mere license, revocable at any time before exercise. Before the licensee has acted upon it, he has no property right in the submerged soil. On the contrary, the State, owning the title to the submerged lands, has the right to reclaim them or to grant them to a stranger for that purpose.

Stevens v. *Paterson*, etc., 34 N. J. L. 532, 545.

N. Y. L. E. R. Co. v. *Yard*, 43 N. J. L. 632, 636.

N. Y. Zinc. I. Co. v. *Morris Canal Co.*, 44 N. J. Eq. 398.

Hoboken v. *Penn. Rd.*, 124 U. S. 656, 453.

Linthicum v. *Coan*, 64 Md. 439, 453.

Giraud's Lessee v. *Hughes*, 1 G. & J. 249, 265.

Casey's Lessee v. *Inloes*, 1 Gill. 430, 432, 497, 498, 450.

Bowlby v. *Shively*, 22 Oreg. 410, 420–1.

Shively v. *Bowlby*, 152 U. S. 1, 55.

The privilege of carrying out wharves and improvements is not an interest in the soil under the waterway. But should we, for argument's sake, concede that it is, such an interest could have none of the consequences defendant contends for. In the very nature of things, it is subject to the continuing power both of the Federal and of the State government to make such use of tidal navigable waters, and the soil under them, as the general

public interests in their charge may require. (*Lewis Blue Point Oyster Co.* v. *Briggs*, 229 U. S. 82, 87.) The grantee of an undoubted interest in soil so situated, is held, even in Virginia, to take the risk of the destruction of his property therein by the State's use of the waterway for some larger public purpose. Thus a statutory lessee of a specified parcel of submerged soil for oyster planting (though the State *guarantee* for 20 years "the absolute right to continue to use and occupy such grounds subject only to the right of fishing in the waters above"), holds that interest subject to the State's continuing power to authorize municipalities to drain city sewage into the waterway in such manner as to ruin the lessee's oyster beds and render the leased grounds useless. (*Darling* v. *Newport News*, 249 U. S. 540, 543.)

From no aspect, then, can defendant show a title to the principal part of the land in suit.

THIRTEENTH POINT.

Defendant had no riparian rights which could preclude the Government from raising the land between the sea wall and high-water mark.

Defendant claims riparian rights which, it says, the filling of Battery Cove will take away, unless it can have the reclaimed land.

There is no magic in the term riparian rights. It is merely a descriptive term for such rights as are enjoyed by the owner of land by reason of its physical location on the *ripa*. Such rights "are

not dependent upon title to the soil over which the river flows, but are incident to ownership upon its banks." (*United States* v. *Chandler-Dunbar Co.*, 229 U. S., 53, 70.)

Since riparian rights do not depend upon, so neither do they imply, any right in the soil under the water. (*Shively* v. *Bowlby*, 152 U. S., 1, 14.) We may concede the defendant everything that is involved in the term without affecting in the slightest degree the question of title which is in issue here.

Riparian rights, moreover, being mere incidents of the existing topographical situation of the land, are necessarily subject to the obligation to suffer the consequences of all lawful alterations in the stream. (*Jackson* v. *United States*, 230 U. S. 1, 21, 23.) Every right in the public waterway enjoyed by reason of ownership of the *ripa*, such as the right of access to navigation from the upland in its natural state or (when permitted by public law) through the aid of some artificial structure, is, of necessity, subordinate to the paramount, permanent, and continuing power of Government to improve the stream and to make such use of its own property as it may deem best for the public good. (*Scranton* v. *Wheeler*, 179 U. S., 141, 169; *Shively* v. *Bowlby*, 152 U. S., 1, 52, 57.)

As pointed out in *Shively* v. *Bowlby*, an express statutory authorization to construct wharves into the stream so far as might be necessary or con-

venient for the accommodation of any vessel that could navigate such stream does not restrict the right of the State owning the submerged soil to sell and convey such land freed from any easement of the upland owner. In truth, that decision, when duly understood, conclusively rules this case, for it deals with the same common-law right of ownership that we have here. It sustained, as against the upland owner, the right of the State to sell and dispose of the shore lands in front of him. If the sovereign can sell such lands to a stranger to be occupied and used, it can surely improve them itself while it retains the title.

In that case the State's right to sell and convey the tidelands was, of course, subject to the paramount right of the Federal Government to protect and control public navigation. That limitation has no application here, for the obvious reason that in this District the National Government has undivided sovereignty. It is in the exercise of its combined powers, which include navigation, that it has constructed this improvement on its own land.

In accord with *Shively* v. *Bowlby*, are the decisions of all the jurisdictions in which, as here, the State has the Crown common-law title to lands under tidal streams.

> *Bowlby* v. *Shively*, 22 Oregon, 410, 414, 418, 426–427.
>
> *Eisenbach* v. *Hatfield*, 2 Wash. St., 236; 36 Pac. Rep., 539.

In the latter case the court, referring to the decisions of this court, particularly *Hoboken* v. *Pennsylvania R. R. Co.* (124 U. S. 656), stated that they—

> * * * would seem to settle beyond controversy the question of title to the tidelands of this State and to leave no doubt whatever that they belong to the State in actual propriety and that the State has full power to dispose of the same, subject to no restrictions save those imposed upon the legislature by the constitution of the State and the Constitution of the United States; and if this be true it necessarily follows that no individual can have any legal right whatever to claim any easement in, or to impose any servitude upon, the tidewaters within the limits of the State without the consent of the legislature (pp. 244, 245).

The conclusion drawn was—

> * * * that riparian proprietors on the shore of the navigable waters of the State have no special or peculiar rights therein as an incident to their estate. To hold otherwise would be to deny the power of the State to deal with its own property as it may deem best for the public good. If the State can not exercise its constitutional right to erect wharves and other structures upon its public waters in aid of navigation without the consent of adjoining owners, it is obviously deficient in the powers of self-development which every government is supposed to possess—a proposition to which we can not assent (p. 253).

To the same effect are:

Muir v. *Johnson*, 49 Wash. 66.

North P. R. Co. v. *S. E. Slade & Co.*, 61 Wash. 195.

In New York access is conceded to be a right for the deprivation of which the owner is entitled to damages against one who, in pursuance of a grant from the legislature, erects a structure across his water front. Nevertheless, it is held that this right, however good against strangers, is enjoyed in subordination to the right of the State (and therefore of its grantee, the city, which had the same power as the State) to convert the submerged soil into fast land in the interest of commerce. (*Sage* v. *The Mayor of New York*, 154 N. Y. 61, 76.)

This case is noteworthy in that it affirms the right of the State or its authorized agency, if the public interest requires it, to interpose, by reclamation in front of the original riparian estate, even a new system of docks and bulkheads which the Government may lease to private individuals.

A similar reclamation in front of, and without compensation to, the upland owner was sustained in *Home* v. *Commonwealth*, 202 Mass. 422.

There the work was not done in aid of navigation, but for another public purpose. It was held, however, that the State's inherent right to make use of submerged lands for the public good was not limited to navigation alone. As to the riparian right of access, the court said:

> In a sense, there is a valuable right of access to the waterway or to the street, so

> long as the waterway or street is there. But it does not follow that the abutter on the waterway can insist that the Government shall make no change in the waterway on its own land, in the interest of more convenient and valuable navigation, which shall leave him with a less convenient passageway to the channel, or perhaps with no passageway at all. The Government has this paramount right to do what is necessary for the public good, in promoting better navigation. The benefits enjoyed by the abutting landowner are held subject to the possibility of diminution or loss by the exercise of this right. (*Home, etc.*, v. *Commonwealth*, 202 Mass. 422, 429.)

The true effect of a harbor line.

It seems appropriate at this point to say a word concerning the inferences defendant seeks to draw from the location of the harbor line.

The establishment of a harbor line by the Secretary of War under the act of March 3, 1890 (30 Stat. L. 1151), is a matter of administration. It does not confer any right, title, or interest upon the riparian owner. It is a mere declaration that structures extended to that point will not interfere with navigation. Whether any such structure, or fill, can be made at all upon the river bed is quite another question.

The fixing of the line is not an authority to make a structure without the consent of the owner of the submerged land. Much less is it a grant of authority

to reclaim upon the bed of a navigable stream in a jurisdiction where the legislative power has not distinctly and positively conferred that right.

> It is not a declaration touching the rights of the owners of the submerged lands in the harbor * * *. But such permission is not given to override the rights of the owners of the submerged lands * * *. It is strictly permissive, and not an authorization by paramount authority to build the structure.
>
> *Cobb* v. *Lincoln Park Commissioners*, 202 Ill. 427; 67 N. E. 5, 9.
>
> *Wilson* v. *Hudson C. W. Co.*, 76 N. J. Eq. 543.
>
> *Hubbard* v. *Fort*, 188 Fed. 987, 994, 996, 997.
>
> *Bradshaw* v. *Duluth I. M. Co.*, 52 Minn., 49.

It suffices to say that with us there is no local law conferring power to fill, and the appellant did not fill.

The correctness of this view becomes even more manifest when we consider that the power is a permanent and continuing power, never exhausted by the exercise of it. (*Greenleaf-Johnson L. Co.* v. *Garrison*, 237 U. S. 251.) If the Secretary may, as in that case, alter the existing line and cause everything beyond it to be removed without compensation, manifestly, the mere fixing of the line could not have operated to pass any title or interest to the area defined by the line. Much less could it pass any title or interest to such area before anything was erected out to the line.

And as the general power to make and alter the improvement is equally permanent and continuing,

it is quite clear also that the United States, which has here improved the Potomac River with a dike and fill confining the channel, may hereafter remove that dike and dredge the river to the width of its natural bed. The power of Congress over this natural highway is coexistensive with the stream and remains uncurtailed until Congress itself sees fit, by positive action, to grant away, as no longer serving any public purpose, what portion of the former bed may seem advisable.

FOURTEENTH POINT.

Conceding, argumenti gratia, that defendant had riparian rights which were cut off by the reclamation, that would not invest it with title to the reclaimed area.

The issue here is ownership. What defendant sought to do was to displace the *prima facie* title of the Government as owner of the river bed and maker of the improvement by showing a fee simple title in itself. Whence, then, is that title derived?

Defendant had no title to the land when it was under water. The land reclaimed is not an accretion to defendant's upland made, little by little, by the gradual and imperceptible natural action of the water. (*Jefferis* v. *East Omaha L. Co.*, 134 U. S. 178, 192; *Linthicum* v. *Coan*, 64 Md. 439, 450.) Defendant is unable to show a valid grant of it from any one of the successive owners of the title.

Defendant's case on this point resolved itself, then, into the proposition that it acquired title to this tract because, in reclaiming it, the United States committed a tort. (R. 157.)

Should we concede that defendant had a right of access to the water and that the United States injuriously cut off that access, how would that vest in defendant a title to the land made by the United States on its own soil?

Or, should we go so far as to concede that this right of access was itself a species of property, an incorporeal hereditament, and that the reclamation has taken that property from defendant, how can the taking of that property vest in defendant title to another and different property—a separate reclaimed area?

Surely no argument is needed to show that the United States would not, by impairing or by destroying the access to defendant's property, divest itself of its own title to another property and transfer it to defendant.

In fact, it has been decided that submerged land, the title to which is in the State, *but actually reclaimed by a stranger*, does not become the property of the riparian owner whose access is thereby taken away to his damage.

In *Austin* v. *The Rutland Railroad Co.* (45 Vt. 215) the riparian owner's estate extended "to the utmost limit of title and ownership in the soil known to the law," viz, to low-water mark. He had, moreover, a statutory right to erect a wharf or storehouse and extend the same from his land to the channel of the lake. Nevertheless, it was held that he acquired no title whatever to land made by a stranger by filling in earth in front of

his land from low-water mark into the lake and upon which such stranger had built wharves and docks. It was said:

> As the absolute owner of said lot, he had the exclusive right to use it in passing to and from the lake. But this gave him no peculiar or additional right as to the lake itself. Of course, it could not give him title to erections or structures made by others beyond the limits of his own land. If, in making such erections and structures, others should violate any right of his, as owner of the land to low-water mark, he could seek redress in some proper way, but not by action based on his right as the owner of them. (*Austin* v. *The Rutland R. R. Co.*, 45 Vt. 215, 242, 244.)

The whole question is one of title. Work done on the *abutting* land does not become a part of the riparian owner's land.

> * * * Here was no building *upon* the plaintiff's land, only an abutting against it by a structure made outside of it. It is not a case of accretion or gradual reliction, which belongs to the riparian owner. It does not fall within the right *usque ad coelum*, for that, of itself, does not often extend more widely than the *solum* of the owner, on which such right must be grounded. * * * (*Austin* v. *The Rutland R. R. Co.*, 45 Vt. 215, 244, 245.)

The same principle is applied in *Coburn* v. *Ames*, 52 Cal. 385, which was an action of ejectment for six acres of land lying on the shore of the Pacific Ocean and for a wharf and chute projecting from

the mainland out to deep water—a considerable distance below low-water mark. The plaintiff was the uncontested owner in possession of the land above high-water mark. The court assumed that, as riparian owner, he was entitled to wharf out to deep water and, also, that the wharf and chute in front of him were erected wholly without authority (p. 397). The plaintiff contended that the wharf and chute became his property. The court said:

> * * * On the contrary, giving to this right of the riparian owner its widest scope and latitude, it amounts only to this: That if he desires to wharf out, and is unlawfully obstructed in the exercise of the right, he may maintain an action for damages; and if the obstruction amounts to a public nuisance, it may be abated by appropriate proceedings for that purpose. If it be only a private nuisance which obstructs him in the exercise of his right to wharf out, he may possibly cause it to be abated by the appropriate method. But he has no such title or right to the possession of the bed of the ocean as will enable him to maintain ejectment. (*Coburn* v. *Ames*, 52 Cal. 385, 398.)

If, as these cases show, the riparian owner acquires no title to land reclaimed in front of him by a stranger, much less can he have any title to land reclaimed in front of him by the sovereign upon its own soil. All of the cases really proceed upon one principle, viz, that he who owns the submerged land owns the land reclaimed. *Sciendum est eius manere cuius fuit.* The riparian owner only gets the land

reclaimed when he is also the owner of the fee in the submerged land or has, by valid grant, an interest therein amounting to such ownership. To defeat this action, therefore, defendant must show a title to the land when submerged. This, by the law, it can not do. An injury to rights which exist independent of the title to the land submerged, and as incidental merely to its upland (which remains untouched), will not avail, no matter how serious or far-reaching such injury might be.

In fact, defendant's contention would lead to the absurd consequence that the less its riparian rights were worth the more it would receive in consequence of their being taken away. The greater the stretch of shoal water in front of its upland the greater, of necessity, the extent of reclamation. But the greater this stretch of shoal water the less the value of the riparian rights.

Conceive two riparian owners having tracts of equal frontage, one only 100 feet from the channel the other separated from it by 500 feet of shoal water. The cutting off of riparian rights by a wall along the channel injures the first vastly more than the second, yet the second, upon defendant's theory, would acquire a reclaimed area five times greater than the first.

The case taken as an illustration is no more striking than the case at bar.

All the maps in evidence concur in showing that the bow-shaped indentation called Battery Cove had an average depth of 1½ feet at low tide. (R. 6.)

Only at the northern and southern extremities of the arc did the shore approach the navigable channel. Hence, only a small fraction of the reclaimed area would fall to the owners of the upland parcels at these extremities, where there was little if any reclamation; whereas a large area would devolve upon the owners of the parcels in the center, where, by reason of distance from the channel, reclamation was necessarily extensive. **Thus, if defendant is right, the shore where the riparian rights are the least valuable would acquire the major portion of the reclamation.**

According to the proposition now under consideration, title to the reclaimed area results solely from riparian rights. If so, the land which the riparian owner gains is in *inverse ratio* to the value of the riparian rights which reclamation has taken away.

Obviously title to the land reclaimed is not the measure of compensation for the cutting off of riparian rights. Ownership must, in accordance with fundamental principles, be left to follow the title of the *solum*. Any injury to riparian rights, **however great, is not a grant of the soil.**

It is respectfully submitted that the judgment should be affirmed.

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Appendix.

Notes on Certain Maps.

Exhibit 3: This is a composite map designed to show Jones Point, Lumley Point, and Point West.

This is not an original map, but a composite, made by pasting two distinct blue prints together The first would appear to be a map of the Alexandria water front prior to the reclamation. The second is an unauthenticated blue print, which shows the sea wall as proposed and upon which also has been laid down Point Lumley as it appears by Exhibit 1 to have been in 1748. It is obvious that this composite map has no probative force whatever. It does not represent conditions at any one time according to any actual survey.

Exhibit 5: This is also a composite map. It is a copy of Exh. 4 (plat attached to House Doc. No. 1253, 60 Cong., 2 sess.), on which plaintiff in error (defendant) has attempted to lay down (1) retaining wall built by the Government and (2) the shore line in 1748.

This map shows that the old marks of Point Lumley are destroyed, and that the present shore line in that vicinity is altogether artificial. In this map defendant has, also, indicated the bulkhead line proposed by the engineers, and has drawn a straight line from the artificially extended Point Lumley to Jones Point for the purpose of indicating that the reclaimed area is westward of such imaginary line. See *Supra*, Seventh Point (iii).

Exhibit 11: Plat showing properties in the neighborhood of the shipyard at the foot of Franklin Street.

This plat, prepared by defendant's counsel, does not show on what survey, if any, it is based, but

counsel for plaintiff understands that it was prepared for the purpose of illustrating the titles to the different lots in the vicinity of the shipyard.

Upon this map lines have been drawn which would show where Union, Green, Church, and South Streets *would run if extended* into the river between Jones's Pt. and the shipyard. But it obviously has no probative force. It is singular, also, in putting the water line farther inland into Lee Street than the Maskell Ewing map of 1845.

Exhibit 12: Sketch of the squares and lots showing the relation of Strand Street to Point Lumley.

This plat, prepared by defendant's counsel to illustrate an abstract of title, is wholly outside the locus. It shows the original lines and divisions of the squares between Wolf St. on the south and Duke on the north and eastward of Union St. It shows that Strand St. was laid out between Duke and Wolf Streets, parallel with and at a distance of 180 feet from Union; but a comparison of this map with the original plat of the city, Exh. 1, will show that this Strand Street was laid out on fast land existing as early as 1748. The evidential value of the map, therefore, is not apparent. We have always conceded that the area between Pt. Lumley and Pt. West was filled in, in the XVIII century, to the extent of about a square and a half; i. e., from Water (now Lee) Street to the present shore line east of Strand Street.

Exhibit 13 is purely illustrative. On a photographic copy of a portion of Exh. 6 defendant has drawn in the water a straight line from Jones's Point to the river bank between Pendleton and Wythe Sts. for the purpose of illustrating his contention that the boundary is an imaginary straight line.

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REPLY BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

NO. 326.

MARINE RAILWAY AND COAL CO., INC.,

PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA,

DEFENDANT IN ERROR.

In Error to the Court of Appeals of the District of Columbia.

REPLY BRIEF OF PLAINTIFF IN ERROR ON

MOTION TO DISMISS.

In its reply brief upon the hearing, the Defendant in Error questions the right of this Court, to entertain the Writ of Error in this case, and suggests that it be dismissed, because the order allowing the Writ does not specifically show, that the question of jurisdiction alone is certified to this Court for decision.

It is submitted, that this motion should not be sustained for the reasons following:

FIRST:

1. The Defendant in Error admits that the jurisdiction of the trial Court is the sole question before this Court for its decision, in these words: "This case turns upon the location of the boundary between Virginia and the District of Columbia, on the Potomac River;" and, devotes the first sixteen pages of its brief to the boundary question between the District of Columbia and Virginia, and the question of the jurisdiction of the trial Court.

2. The petition for the Writ of Error, is in strict compliance with the provisions of Section 250 Judicial Code, and the first and sixth paragraphs thereof, and is based upon the following questions:

(a) The jurisdiction of the trial Court.

(b) The construction of certain Federal Statutes, drawn in question by the Defendant on the trial of the plea to the jurisdiction, in their relation to the territorial boundary between the District of Columbia and Virginia.

(c) The construction of paragraphs six and seven of the Compact of 1785, in their relation to the boundary between Virginia and Maryland, and to the boundary between the District of Columbia and Virginia.

(d) The jurisdiction of the trial Court in this case, is wholly dependent upon the location of the territorial boundary between the District of Columbia and Virginia, and is inseparable from it and must be determined by it.

3. None of the statutes, the construction of which are involved in this controversy, are local in the sense in which the counsel for the Defendant in Error contends. They do not relate to the internal affairs of the District of Columbia.

(a) The Act of Congress receding Alexandria City and County to the State of Virginia, is not local in its character. It is an Act in which both the United States and the State of Virginia were interested.

(b) The Act of Congress, approved June 22, 1874, Section 1, territorial area, is likewise not strictly local, but effects not only the District of Columbia, but also, both the states of Maryland and Virginia, as the two latter are interested in where that boundary line is located.

(c) The Act of Congress approved March 3, 1879, giving consent to the agreement, arbitration and award of Virginia and Maryland, is not local in its character. In its bearing, it not only has relation to the territorial boundaries of the District of Columbia, but has relation also, to the states of Maryland and Virginia, and the boundary line between them, in which all three jurisdictions have an interest.

4. The petition for a Writ of Error to this Court, pages 203 to 205 inclusive, of the printed record, shows clearly the grounds upon which the petition is based, and from which it distinctly appears, that it is based upon the question of the jurisdiction of the trial Court, and the construction of certain laws of the United States in their relation to and effect upon the territorial boundary line between the District of Columbia and the State of Virginia, and the construction of paragraphs six and seven of the Compact of 1785, between Virginia and Maryland, in their relation to the boundary between said States, and to the boundary between Virginia and the District of Columbia. Upon this petition, as will appear from pages 209 to 210, inclusive, of the printed record, the Writ of Error was allowed to this Court. From the petition for the Writ of Error, and the order allowing the same, there is but one conclusion to be drawn, that is, the only question presented to this Court for decision, is the jurisdiction of the trial Court, which necessarily involves the determination of the boundary line between the District of Columbia and Virginia. All the errors assigned relate to the question of jurisdiction, and as a necessary incident thereto, the boundary line between the District of Columbia and Virginia. The plea filed by the Plaintiff in Error in the trial Court, is to the territorial jurisdiction of the trial Court, and nothing else. Surely, it will not be contended in such a case, it is necessary to put in the order granting the petition, a certificate that the only question certified to this Court for its decision, is the jurisdiction of the trial Court, when from the petition and the record, it sufficiently appears, that the only questions submitted by the petition for the Writ of Error, is that of the jurisdiction of the trial Court, and the construction of the Statutes and Compact mentioned as bearing upon that question.

It is therefore respectfully submitted that the question of the jurisdiction of the trial Court, is sufficiently certified to this Court for decision, and agrees with the rule laid down by this Court in the following cases:

Interior Construction & Improvement Co. vs. John C. Gibney, et al, 160 U. S. 217-220.

Huntington vs. Laidley, 176 U. S. 668.

SECOND:

As to the further contention of the Defendant in Error, that this Court is without jurisdiction to entertain this Writ of Error, because the issue in this case on the plea to the jurisdiction of the trial Court did not involve the jurisdiction of the trial Court as an United States District or Federal Court, but the jurisdiction only of said Court under its fundamental power as a local Court of general jurisdiction to entertain any action touching the locus. It is respectfully submitted that this contention of the Defendant in Error, is without merit, for the following reasons:

1. This case was not instituted by the Defendant in Error, in the Supreme Court of the District of Columbia, sitting as an United States District Court, and does not fall within the line of cases included within the qualified and limited jurisdiction of the Federal Courts. But, on the contrary, it was instituted in said Court as a local Court of general jurisdiction in law and equity, and under claim that it had jurisdiction of the subject matter thereof. The judgment in this case was obtained in said Court under its last mentioned jurisdiction, from which it was appealed to the Court of Appeals of the District of Columbia and affirmed. This case could not have been brought in the Supreme Court of the District of Columbia, sitting as an United States District Court, as its jurisdiction is defined by Congress in Section 24, Chapter 2, of the Judicial Code.

2. The Supreme Court of the District of Columbia, is vested by the Acts of Congress relating to the Courts of the District of Columbia, with dual jurisdictions: First—Jurisdiction as an United States District Court, and Second

—With general jurisdiction as a local Court in law and in equity. These jurisdictions as conferred by statutes are wholly distinct one from the other, and are exercised by said Court in its dual capacity. In the first instance, while sitting as an United States District Court for the District of Columbia, it has jurisdiction in law and in equity, yet, that jurisdiction is a qualified one, and is limited to the class of cases specifically defined by Chapter 2, Section 24, of the Judicial Code. In the second instance, its jurisdiction in law and in equity, is general and unlimited as a local Court, in all cases touching the locus. This distinction was made and has been preserved in the Acts of Congress relating to the jurisdiction of the Courts of the District of Columbia from the organization of its Courts.

3. A brief review of the history of legislation by Congress, relating to the jurisdiction of the Courts of the District of Columbia, will show that the distinction between its general jurisdiction in law and equity as a local Court, and its jurisdiction as a Federal Court, has been consistently maintained from the very beginning, and will show also, that the instant case is not within the jurisdiction of the Supreme Court of the District of Columbia sitting as a Federal Court, but is strictly within the jurisdiction of said Court as a local Court of general jurisdiction in law and equity.

The Act of Congress of 1802 for the organization of the Courts of the District of Columbia, United States Statutes at Large, Vol. 2, Chapter 15, Section 3, page 105, provides:

"That there shall be a Court in said District which shall be called the Circuit Court of the District of Columbia; and the said Court and the judges thereof shall have all the powers by law vested in the Circuit Courts, and the judges of the Circuit Courts of the United States."

The same Act, Section 5, page 106, provides:

"That said Court shall have cognizance of all crimes and offenses committed within said district, and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, and also, of all actions or suits of a civil nature at common law or in

equity; in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States."

The same Act, Section 8, page 106 provides:

"That *any* final judgment, order or decree in said Circuit Court, wherein the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the Supreme Court of the United States, by Writ of Error, or Appeal, and which shall be prosecuted in the same manner, under the same regulations; and the same proceedings shall be had therein, as is or shall be provided in the case of Writs of Error or judgments, or appeals upon orders or decrees, rendered in the Circuit Court of the United States."

The Act of Congress of 1863, providing for the organizations of the Supreme Court of the District of Columbia, United States Statutes at Large, Vol 12, Chapter 2, Section 3, page 763, provides:

"That the Supreme Court organized by this act, shall possess the same powers and exercise the same jurisdiction as is now possessed and exercised by the Circuit Court of the District of Columbia, and the justices of the Court so to be organized, shall severally possess the powers and exercise the jurisdiction now possessed and exercised by the judges of said Circuit Court. Any one of said justices may hold a District Court of the United States for the District of Columbia, in the same manner and with the same powers and jurisdiction possessed and exercised by other District Courts of the United States. Any one of said justices may also hold a criminal Court for the trial of all crimes and offenses arising within said district, which Court shall possess the same powers and exercise the same jurisdiction now possessed and exercised by the Criminal Court of the District of Columbia."

The same Act, Section 11, page 764, provides:

"That *any* final judgment, order, or decree of said Court, may be re-examined and reversed, or affirmed, in the Supreme Court of the United States, upon Writ of Error or Appeal, in the same cases and in like manner as is now provided by law in reference to the final judgments, orders and

decrees of the Circuit Court of the United States for the District of Columbia."

Chapter 3, Section 563, page 94, of the Revised Statutes of the United States, Second Edition, clearly defines the jurisdiction of the District Courts of the United States as then existing, and a careful examination of this section clearly shows that, its jurisdiction is wholly Federal in its character and relates to matters peculiarly within the province of the Federal Courts, and does not relate to the general jurisdiction which is vested in the local Courts of law and equity of the States and Territories of the United States, or of the District of Columbia.

Chapter 11, Section 705, page 132, provides for Writs of Error or Appeal from *any* judgment or decree of the Supreme Court of the District of Columbia, to the Supreme Court of the United States, in any case where the matter in dispute exclusive of costs exceeds the value of $1,000.00, etc.

The Supplement to the Revised Statutes of the United States, Vol. 1, Second Edition, 1874 to 1891, page 130, chapter 69, paragraph 11, defines the jurisdiction of the Supreme Court of the District of Columbia, to be as follows: Of all crimes and offenses committed within said district, and of all cases in law and equity between parties, both or either of whom shall be resident, or be found within said District, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land and water and all penalties and forfeitures made, arising or accruing under the laws of the United States, etc. (Chap. 35, Sec. 22, Compiled Statutes of U. S. in force in the District of Columbia, 1894) contains the same provision.

Chap. 355, page 485, defines the jurisdiction of appeal and Writ of Error from judgments or decrees of the Supreme Court of the District of Columbia in suits at law or in equity to be limited to cases in which the amount involved exceeds the sum of $5,000.00, exclusive of costs.

Section 61 of the District Code, Torbert Edition, Annotated, 1919, defines the jurisdiction of the Supreme Court of the District of Columbia as follows: The said Court shall possess the same powers and exercise the same juris-

diction as the Circuit and District Courts of the United States, and shall be deemed a Court of the United States, and shall also have and exercise all the jurisdiction possessed and exercised by the Supreme Court of the District of Columbia, under the Act of Congress approved March 3, 1863, creating that Court, and at the date of the passage of this Code.

Section 64 provides, "the special term of said Court shall be known, respectively, as the Circuit Court, the Equity Court, the Criminal Court, the Probate Court and the District Court of the United States."

Section 226 provides that any party aggrieved by any final order, judgment or decree of the Supreme Court of the District of Columbia or of any justice thereof, including any final order or judgment in any case heard on appeal from a Justice of the Peace, may appeal therefrom to the said Court of Appeals and upon such appeal the Court of Appeals shall review such order, judgment or decree and affirm, reverse or modify the same as shall be just, etc.

Section 233 provides *any* final judgment or decree of the Court of Appeals, may be re-examined and affirmed, reversed or modified by the Supreme Court of the United States, upon Writ of Error or appeal in all cases in which the matter in dispute exclusive of costs shall exceed the sum of $5,000.00, in the same manner and under the same regulations as existed in cases of writs of error or judgments or appeals from decrees rendered in the Supreme Court of the District of Columbia on February 9, 1893, and also, in cases without regard to the sum or value of the matter in dispute wherein is involved the validity of any patent or copyright or in which is drawn in question the validity of a treaty of or authority exercised under the United States.

Section 238 of the Judicial Code provides, that appeals and writs of error may be taken from the District Courts including the United States District for Hawaii direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the Court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision, etc.

Section 250, Paragraph 1, provides, that *any* final judg-

ment or decree of the Court of Appeals of the District of Columbia, may be re-examined and affirmed, etc., by the Supreme Court of the United States upon Writ of Error or Appeal, in the following cases: 1—In cases in which the jurisdiction of the *trial* Court is in issue. 6—In cases in which the construction of any law of the United States is drawn in question by the defendant, etc.

From this review of the Statutes, it is clear that the distinction between the respective jurisdictions of the Supreme Court of the District of Columbia as a Court of general jurisdiction in law and equity, and as an United States District Court, has been consistently maintained; and it is also clear that the Writ of Error and Appeal from these separate jurisdicions have been in the past, and are now, separate and distinct as is shown by Sections 238 and 250 of the Judicial Code, and the preceding legislation relating thereto. To contend otherwise, is to say, that Congress has been engaged in idle and unnecessary duplication of the Statute Law on these questions.

It is therefore respectfully submitted, that this Court clearly has jurisdiction to review this case under Section 250 of the Judicial Code, and that the Writ of Error was properly allowed, and that the motion to dismiss should be overruled.

JAMES R. CATON,

Counsel for Plaintiff in Error.

MARINE RAILWAY & COAL COMPANY, INC. *v.* UNITED STATES.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 45. Argued October 18, 1921.—Decided November 7, 1921.

1. The jurisdiction of this court to review judgments of the Court of Appeals of the District of Columbia "in cases in which the jurisdiction of the trial court is in issue" (Jud. Code, § 250, cl. 1), attaches to a case originating in the Supreme Court of the District in which the issue concerned the territorial limits of that court's jurisdiction. P. 62.
2. The Supreme Court of the District of Columbia being a court of general jurisdiction, there is no occasion to limit the natural scope of Jud. Code, § 250, cl. 1, after the manner in which the similarly worded § 238, applicable to the District Courts of the United States, has been confined to cases in which their jurisdiction as federal courts is involved. P. 62.
3. A certificate of the question of jurisdiction is not necessary, under Jud. Code, § 250, *supra*, where the issue was clearly made by plea and a certificate could add nothing to the record. P. 62.
4. *Quære:* Whether the rule construing the sixth clause of Jud. Code, § 250, as conferring jurisdiction only when the law drawn in question is of general application throughout the United States, as distinguished from one local to the District, would apply in a case involving a statute fixing the boundary of the District. P. 62. Cf. *American Security & Trust Co.* v. *District of Columbia*, 224 U. S. 491.
5. The original title of Maryland, to which the United States succeeded in the District of Columbia, extended at least to the low water mark on the Virginia side of the Potomac River. P. 63.

See *Maryland* v. *West Virginia*, 217 U. S. 1, 45, 46; *id.* 577, 578; and *Morris* v. *United States*, 174 U. S. 196.

6. The Maryland title was not affected by later charters granted by James I to Virginia. P. 63.
7. A grant made by the Governor of Virginia to one Howsing in 1669, with a boundary "extending down Potomack River by various courses 3152 po. making a S. Wtly line to a pokecory," etc., and "including several small creeks or inlets," *held* consistent with as well as subordinate to the Maryland grant, merely following the line of the stream and not intended to include an indentation or cove. P. 63.
8. The grant made by Virginia to the United States of territory formerly included in the District of Columbia and its re-grant by the United States did not enlarge Virginia's rights as they were originally. P. 63.
9. The compact entered into between Virginia and Maryland, in 1785, to regulate commerce, which provided, *inter alia*, that the Potomac should be a common highway for purposes of navigation and commerce to the citizens of both States and gave the citizens of each full property in the shores of the river adjoining their lands with wharfing and fishing rights, did not settle the question of boundary between the States. P. 63.
10. The arbitration of boundary between Virginia and Maryland, the award in which was accepted by those States in 1878 and assented to by the United States (Act of March 3, 1879, c. 196, 20 Stat. 481,) fixing the line at low water mark on the Virginia side of the Potomac drawn from headland to headland, did not involve or affect the boundary as between Virginia and the District of Columbia. P. 64.
11. The filling in and adverse occupation of land originally below low water mark on the Virginia side of the Potomac under an erroneous claim that the Virginia line included a cove in which the land was situated by extending from headland to headland, gave no prescriptive right, as against Maryland or the United States, to land lying in the cove, and below low water next to the areas so filled, even though the claim was supported by Virginia statutes. P. 65.
12. The description of the District of Columbia in the Revised Statutes relating thereto, June 22, 1874, § 1, as "including the river Potomac in its course through the District," imports an assertion by Congress that the title of the United States embraces the whole river; and the jurisdiction of the District over the river seems to have been exercised without dispute. P. 65.

47. Argument for Plaintiff in Error.

13. The United States is entitled to the possession of land in the District which it has reclaimed by filling below low water line on the Virginia side, though access to the water from private lands adjacent be thereby interrupted. P. 66.

49 App. D. C. 285; 265 Fed. 437, affirmed.

ERROR to review a judgment of the Court of Appeals of the District of Columbia which affirmed a judgment of the Supreme Court of the District in favor of the United States in a suit brought by the United States to recover a strip of made land on the Potomac River.

Mr. James R. Caton for plaintiff in error.

In *Maryland* v. *West Virginia*, 217 U. S. 1, 517, this court recognized that the arbitration and award established the boundary line between Virginia and Maryland, to be the *true* boundary line between said States, agreeably to the Compact of 1785. And see *Wharton* v. *Wise*, 153 U. S. 155, 172, 173.

The claim of the plaintiff in error not being founded on the Culpeper grant, is distinguished from *Morris* v. *United States*, 174 U. S. 196. There was no evidence in that case of any substantial claim by Lord Fairfax, or by his grantees, to property rights in the Potomac River or the soil thereunder; nor was there any evidence that Virginia ever exercised the power to grant ownership in the islands or soil under the river to private persons. In this case, the Howsing grant of 1669, and its history, show that Virginia claimed the right and exercised the power, and has for 243 years, and up to the time of this suit, consistently and continuously claimed and exercised territorial dominion and jurisdiction.

The true boundary between Maryland and Virginia in 1785, and for a long time prior thereto, on the Virginia side of the Potomac, was a uniform line at low-water mark from one headland to low-water mark at another,

without following indentations, bays, creeks, etc.; and to this line Virginia had become entitled as early as 1785 by prescriptive right, and it was fixed and established by the Compact of 1785, all of which appears from the report and award of the arbitrators selected under agreement by Maryland and Virginia, and the subsequent acceptance thereof by the acts of assembly of both States and the consent thereto by Congress.

The grants by James I to Virginia do not appear to have been in evidence, or even considered, in *Morris* v. *United States, supra.* Out of these conflicting grants there arose a lengthy controversy between Maryland and Virginia,—Maryland claiming by virtue of the charter of Charles I to Lord Baltimore the whole of the Potomac to high-water mark on the Virginia side, and Virginia claiming by virtue of the charters of James I and by prescription to high-water on the Maryland side, Virginia insisting that the boundaries of the territory under the grant to Lord Baltimore extended only to high-water mark on the Maryland side. During the 150 years or more this controversy continued, Virginia always asserted territorial jurisdiction, ownership and possession of the shores or strands on the Virginia side, which is evidenced by the grant of land to include the soil under the waters on the Virginia side of the river to Howsing, in 1669, which was prior to the grant of James I, in 1688, to Lord Culpeper. See *Maryland* v. *West Virginia,* 217 U. S. 1, 45; s. c. 217 U. S. 577–581.

The Act of Congress of 1874, defining the political boundaries of the District of Columbia, does not alter the boundary line between Virginia and the District, as set forth in the arbitration and award of 1878; according to the true interpretation of the act, it serves only to confirm the contention of plaintiff in error.

Although that act is a political declaration of the boundaries of the District, yet, when the United States

comes into a court of law and sues to recover the fee of a parcel of land claimed by it to be within the boundaries of the District, and that fact is put in issue by plea to the jurisdiction, it is bound to establish that fact, and the case must be tried on the law and the facts of the case.

Battery Cove, which includes the land in controversy, is no part of the course or of the navigable body of the river.

In the Howsing grant it is expressly stated that the line is a southwesterly line from Alexander's Island to Jones' Point, which is a straight line. The presumption is that a line between monuments is a straight one. This is not overcome by the fact that monuments are at points on the same river. *Slade* v. *Etheridge*, 13 Ired. Law, 553.

The Howsing grant, the legislation of the Colony and State of Virginia, from 1753 to 1789, and from 1846 to 1912, the making of land by Virginia and her citizens into the Potomac all along the Alexandria river front, covering a distance of two blocks east of the shore line of 1748, making 14 city blocks and including streets containing an area of about 35 acres, sustain the prescriptive claim of territorial sovereignty and jurisdiction in Virginia.

Possession under the Howsing grant of a part of the land comprehended within its boundaries, constitutes possession of the whole; especially is this true where acts of possession and claim of ownership under the grant, and the exercise of sovereignty and jurisdiction by the State and city, have continued for so long a period. Taxes have been imposed and collected thereon by both Virginia and Alexandria during all that period, except between the cession and recession of the Virginia territory. All titles to property within the lines of the Howsing grant in Alexandria City and County, including Alexander's Island and Pearson's Island, and to the made lands on the Alexandria river front, are recorded in Virginia. *Jackson* v. *Camp*, 1 Cowp. 605, 612. This constructive possession has its origin in the maxim of the common law that " possession

of a part shall be construed as possession of the whole." *Garrett* v. *Ramsey*, 26 W. Va. 345, 351; *Lowndes* v. *Huntington*, 153 U. S. 1, 32.

Sovereignties may lose territory by prescription as individuals may lose their title by adverse possession. *Rhode Island* v. *Massachusetts*, 4 How. 591, 639; Vattel, Law of Nations, bk. 2, c. 11, § 149. The constant and approved practice of nations shows that, by whatever name it be called, the uninterrupted possession of territory for a certain length of time by one State excludes the claim of every other. Wheaton, Int. Law, pt. 2, c. 14, § 164; *Indiana* v. *Kentucky*, 136 U. S. 479; *Virginia* v. *Tennessee*, 148 U. S. 503, 523, 524; *Maryland* v. *West Virginia*, 217 U. S. 1, 577, 585; *Phillips* v. *Payne*, 92 U. S. 130.

The Act of Congress of June 25, 1910, read with related legislative documents, clearly recognizes the territorial rights and jurisdiction of Virginia over the whole line of the authorized improvement along the Alexandria river front from Jones' Point to the northern corporate limits of said city.

If the contention that the original line of the Calvert grant of 1632 is the present boundary between the District and Alexandria were upheld, it would cut off Alexandria entirely from the river and place in the District all the land made in the coves prior to 1785, covering a large number of city blocks, and would disturb the title of their owners.

Whilst Alexandria was a part of the District of Columbia, Congress preserved the integrity of the territorial and jurisdictional limits of Alexandria, and since the recession neither the United States nor the District has made any claim to the territory within these lines or exercised any act of jurisdiction over the same during the 67 years previous to the time Battery Cove was filled.

After the lapse of time between the date of the Howsing grant and the present, the presumption of law is in

favor of the validity of that grant. *Fletcher* v. *Fuller*, 120 U. S. 534; *Cariño* v. *Insular Government*, 212 U. S. 449; *Costas* v. *Insular Government*, 221 U. S. 623; *Matthews* v. *Burton*, 17 Gratt. 312; 32 Cyc. 1202. An original grant carries with it constructive or legal possession of the whole area covered by the grant. *Dawson* v. *Watkins*, 2 Rob. (Va.) 259, 268; *Green* v. *Liter*, 8 Cr. 229; *Green* v. *Watkins*, 7 Wheat. 27; *Howdashall* v. *Crenning*, 103 Va. 30.

There is no evidence showing that either Maryland or the United States ever made any claim to Alexander's Island or Pearson's Island, or any of the bays, creeks or inlets, included in the Howsing grant.

The Compact of 1785 was a complete and binding agreement between Maryland and Virginia, and their respective territorial rights thereunder had become fixed before the formation of the Federal Government and the adoption of the Federal Constitution. *Wharton* v. *Wise*, 153 U. S. 155, 166; *Virginia* v. *Tennessee*, 148 U. S. 503, 521.

The compact confirmed the territorial ownership and jurisdiction of Virginia. The acts of cession of these States did not modify the compact in so far as it fixed the territorial boundaries and jurisdiction of Virginia. *Georgetown* v. *Alexandria Canal Co.*, 12 Pet. 91.

The riparian right of making wharves and other river improvements is property, subject only to the power of Congress under the commerce clause, and can then be interfered with only when necessary to promote navigation. *Illinois Central R. R. Co.* v. *Illinois*, 146 U. S. 387; *Yates* v. *Milwaukee*, 10 Wall. 497, 504.

The right of a riparian owner is not a mere license, or privilege, but is property in the soil up to the line of navigation, though covered by water. *Norfolk* v. *Cook*, 27 Gratt. 430, 434, 435; *Railroad Co.* v. *Schurmeir*, 7 Wall. 272, 290; *Dutton* v. *Strong*, 1 Black, 1, 29; *Grover* v. *Foster*, 96 Va. 650; *Peck* v. *Hampton*, 115 Va. 855.

The United States did not acquire title to or jurisdiction over the filled area because of the fact that in the improvement of the river and harbor it made and reclaimed the land. *Illinois Central R. R. Co.* v. *Illinois*, 146 U. S. 387.

By the act of Congress approving and consenting to the agreement and award, the United States became a party thereto as fully and as effectually as if it had been a party at the very inception of the agreement to submit to arbitration. *Wharton* v. *Wise*, 153 U. S. 155, 172, 173; *Virginia* v. *Tennessee*, 148 U. S. 503, 521. The reservation in the act consenting to the arbitration and award, of jurisdiction over the waters and islands, referred only to the powers of Congress over the waters and islands under the commerce clause of the Constitution. The reservation does not relate to territorial or property rights, but to jurisdiction only.

Mr. Henry H. Glassie, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Frierson* and *Mr. Leslie C. Garnett*, Special Assistant to the Attorney General, were on the brief, for the United States.

The United States, as successor to the lord proprietary of Maryland and as complete territorial sovereign of the District of Columbia, has not only the dominion but the absolute property of the soil of the Potomac River. Any land, therefore, raised upon the submerged bed in the course of a lawful public improvement, is owned in absolute property by the United States. Hale, De Jure Maris, c. 6; *Shively* v. *Bowlby*, 152 U. S. 1, 48; *Austin* v. *Rutland R. R. Co.*, 45 Vt. 215, 244; *Hoboken* v. *Pennsylvania R. R. Co.*, 124 U. S. 656, 690.

It is settled that the Maryland Charter of 1632 embraced the Potomac River and the soil under it to high-water mark on the Virginia bank. *Morris* v. *United*

States, 174 U. S. 196, 225; *Alexandria Canal Co.* v. *District of Columbia,* 1 Mackey, 257. It is true that the Marshall claim rejected in the *Morris Case* was based upon the Culpeper grant of 1688, whereas the claim here is based on the Howsing grant of 1669. But the Culpeper grant was a confirmation of the original grant to Hopton of September 18, 1649, confirmed to his successors on May 8, 1669 (4 Hen. Stat. Va., c. XVIII, pp. 514, 519). In holding that the Maryland title was "not affected by the subsequent grant to Culpeper" the court held in effect that it was superior to the original Hopton grant which was itself senior to Howsing.

The Howsing grant embraced no part of the Potomac River: (a) Because it was an ordinary conveyance, under a general system for the disposition of unappropriated lands, which even by Virginia law carried no soil under public tidal waters. *Home* v. *Richards,* 4 Call (Va.) 441, 446, 447; *Mann* v. *Tacoma Land Co.,* 153 U. S. 273, 284. (b) Because, the Governor of Virginia being without power to enlarge the political boundaries of the colony, the grant must be construed as confined to land in Virginia (c) Because the description, beginning on land and "extending down the Potomack River various courses 3152 poles," does not call for straight lines in the river. *Brown* v. *Huger,* 21 How. 305, 320; *Hardin* v. *Jordan,* 140 U. S. 371, 380; *Smith* v. *Aldridge,* 2 Hayw. 382; *Rogers* v. *Mabe,* 15 N. Car. 180, 184. The river being public, the grant stops at the water's edge, notwithstanding the words "including several small creekes or inlets for the said quantity." The last expression means only that the quantity had been measured approximately without allowance for small water areas within the tract.

While some so-called islands now forming part of the Virginia mainland were taken possession of under the Howsing grant, no part of the *locus,* which remained submerged until the improvement, was ever in the possession

of the grantees. Constructive adverse possession under color of title—itself a mere legal fiction, *Carey* v. *Cagney*, 109 La. 77, 82—has no application to lands not susceptible of possession in the ordinary sense. *Chandler* v. *Spear*, 22 Vt. 388, 404; *Paine* v. *Hutchins*, 49 Vt. 314, 318; *Bailey* v. *Carleton*, 12 N. H. 9; *Thompson* v. *Barhans*, 61 N. Y. 52, 68. Nor to land which the grantor is incapable to convey. *Proctor* v. *Railroad*, 100 Me. 27, 29; *Roberts* v. *Baumgarten*, 110 N. Y. 80, 83. Hence not to land covered by water, which is not only *publici juris* but lies over the frontier in the territory of an independent sovereignty. *Hoye* v. *Swann*, 5 Md. 237, 249; *Casey* v. *Inloes*, 1 Gill. 497, 500. In the absence of occupancy, the seizin remains in him who has the title. *Hunnicutt* v. *Peyton*, 102 U. S. 333, 368. The Maryland proprietary was not bound to notice domestic conveyances in Virginia. Nor would possession of upland under such conveyances indicate that the patentees claimed soil under the river, patentable neither in Virginia nor in Maryland.

The Maryland-Virginia Compact of 1785 was without effect on the Potomac boundary.

The purpose was not to change the charter line but to make provision for the concurrent use and police of the waters. Proc. Md. Conv. 1774–1776, pp. 291, 293. *Attorney General* v. *Del. & B. B. R. R. Co.*, 27 N. J. Eq. 1, 121; *Nicoulin* v. *O'Brien*, 248 U. S. 113, 114; *Wedding* v. *Meyler*, 192 U. S. 573, 584.

The shore and wharf rights allowed the Virginia upland owners, being consistent with continued ownership in Maryland, did not involve alteration in the line.

The compact was not regarded by the parties as having determined the boundary. This is established: (a) By the repeated efforts subsequently made to secure a settlement. Laws Md. 1831, Res. No. 128; 1833, Res. No. 80; 1834, Res. No. 99. (b) By Virginia's claiming, as late as 1872, the whole river to the north bank. Report and Accom-

panying Documents of Virginia Commissioners appointed to ascertain the Boundary Line between Maryland and Virginia. Rich. 1873, p. 3, Append. B, p. 86.

No reason exists for giving the compact the effect suggested. Shore lines are physical, not imaginary lines. A boundary from headland to headland is highly inconvenient in practice and inconsistent with dominion of the river, as such, which unquestionably belonged to Maryland. Hall, Int. Law, 7th ed., p. 125; 1 Moore, Int. Law Digest, p. 617; Grotius, De Jur. Bell. et Pac., Lib. II, c. 3.

Construing the compact as a treaty between two sovereign States (*Howard* v. *Ingersoll*, 13 How. 381, 412), the privileges in the waters and adjacent shores are no more than a recognition of servitudes in the stream generally allowed in favor of the subjects of the opposite sovereign. *The Apollon*, 9 Wheat. 362, 369; Wheaton, Int. Law, §§ 193, 194; Kaeckenbeck, International Rivers, 15, 34, 74, 134, 184. The cession of a right of user, for whatsoever purpose, cannot be deemed a surrender either of the basic right of property or of territorial sovereignty. Rivier, Droit des Gens, t. I., p. 296; Vattel, bk. I, c. 22, § 273.

The compact, being made between Virginia and Maryland in their character as States, was subject to alteration by their joint will. *Georgetown* v. *Alexandria Canal Co.*, 12 Pet. 91, 96; Opphenheim, Int. Law, vol. I, §§ 204, 520. It was, therefore, abrogated by the vesting of this absolute power in a single sovereign, when the two States ceded to the United States the original District, including the whole of the river, its bed, and the shores on both sides. *Evans* v. *United States*, 31 App. D. C. 550. The principle of *consolidatio* is recognized as applicable to international servitudes. Calvo, Droit Int. I, p. 33; Heffter, Droit Int. (traduc-francaise), § 43, p. 93. The retrocession to Virginia (Act of July 9, 1846, c. 35, 9 Stat. 35) making no mention of them, the merged

easements and privileges were not revived. *Evans* v. *United States*, 31 App. D. C. 544, 552; *Capron* v. *Greenway*, 74 Md. 289, 293; *Denton* v. *Leddell*, 23 N. J. Eq. 64, 66; *Rogers* v. *Powers*, 204 Mass. 262, 264; *Greenwood* v. *Metropolitan Elevated R. R. Co.*, 12 N. Y. S. 919; Pardessus, Traité des Servitudes, §§ 16, 296, 299.

The arbitration award of 1877, being limited to the boundary between Virginia and Maryland, was without effect on the Virginia-District of Columbia boundary. Nor did the Act of March 2, 1879, 20 Stat. 481, giving the consent of Congress to the award, make it applicable to the Virginia-District of Columbia boundary, notwithstanding the proviso, inserted out of abundant caution, that nothing therein contained should impair or affect any right or jurisdiction of the United States over the islands and waters forming the subject of such award. *In re Devoe Manufacturing Co.*, 108 U. S. 401, 415.

Maryland v. *West Virginia*, 217 U. S. 1, 577, is not an authority on the Potomac boundary. The real question there was the western, not the river boundary. The court's attention was not directed to the question of high or low water mark. The suggestion in the supplementary opinion (217 U. S. 580) that the privileges on the shores were inconsistent with the charter boundary was grounded on a tacit concession, for Maryland after the award of 1877 had never pressed a claim to high water mark The expression of opinion is not binding. *The Genessee Chief*, 12 How. 443, 455.

The headland to headland theory has no possible application to an interstate river boundary. It is not recognized by the United States as a general principle even in maritime boundaries. 1 Moore, International Law Dig., 719. The line cannot be drawn across the ordinary indentations and sinuosities of the shore. *Direct United States Cable Co.* v. *Anglo-American Tel. Co.*, L. R., 2 A. C. 394, 418. Maritime boundaries are drawn from

headland to headland only when they mark the entrance to a landlocked estuary or bay. 1 Moore, Int. Law Dig., pp. 703, 704, 741; 1 Ops. Atty. Gen. 32; *Stetson* v. *United States,* 32 Alb. Law Journ. 484; 4 Moore, Int. Arb. 4332–41. The present points claimed as headlands cannot be taken because they have been artificially created. The old, obliterated points some distance inland cannot be taken because, if ever headlands, they are such no longer. A headland call requires a definite, permanent, visible object. The claim for a headland line is an attempt to apply the Maryland-Virginia arbitration line of 1877, reached upon the erroneous assumption that boundary is determined by the extent of the wharfing privileges.

Domestic statutes of Virginia authorizing extensions of Alexandria into the river do not make a new interstate boundary. Acquiescence cannot be inferred from Maryland's failure, during the Revolutionary period, to prevent such fillings. The land so made may be treated as an accomplished fact. *Indiana* v. *Kentucky,* 136 U. S. 479, 510. But failure to prevent by force particular encroachments cannot be treated, in the face of Maryland's denial, as an acknowledgment of a general right to make them. It is the fact of occupancy, not the claim, which works the change. *Arkansas* v. *Tennessee,* 246 U. S. 158, 172. Between 1791 and 1847 the United States was sovereign of both shores, and changes in the water front then made cannot affect the question because there was then no boundary to affect. Virginia statutes passed after the retrocession are merely paper claims of jurisdiction not acquiesced in by the United States. Congress, on the contrary, has expressly defined the District, and governed it, as the territory ceded by Maryland, "including the river Potomac in its course through the District, and the islands therein." Rev. Stats. D. C. § 1. In such a conflict the legal title must prevail. *United States* v. *Texas,* 162 U. S. 1, 88.

Virginia has not shown such long continued possession of, or exercise of dominion over, the disputed area as would be equivalent to the relocation of a common boundary line by acquiescence. Calls of private conveyances for lines running "into the river," etc., do not constitute adverse occupation of the bed of a public river. The United States had all the possession of which such soil was susceptible. Such actual jurisdiction as has been exercised has been in accordance with the Government's claim: By police of the waters and protection of the fisheries. Act April 6, 1880, 21 Stat. 71; Act March 2, 1885, 23 Stat. 340. By taxation of physical objects affixed to the soil of the bed. Acts of February 5, 1808, 2 Stat. 457; July 14, 1832, 4 Stat. 502; June 30, 1834, 4 Stat. 727; July 27, 1868, 15 Stat. 231; June 21, 1886, 24 Stat. 84; July 18, 1888, 25 Stat. 314. By the execution of process and the enforcement of the District excise laws on boats even while in the slips at Alexandria.

The title of the United States, like the Crown title in tidal rivers in England, is an absolute right of property in the soil. *Rex* v. *Parmenter*, 10 Price, 378, 409. Hence, the Government being the owner of the fee of the soil while submerged, remains the owner of the fee of the soil reclaimed. *Shively* v. *Bowlby*, 152 U. S. 1, 11; *Barney* v. *Keokuk*, 94 U. S. 324; *Haight* v. *Keokuk*, 4 Ia. 199; *Tomlin* v. *Dubuque R. R. Co.*, 32 Ia. 106; *Hoboken* v. *Pennsylvania R. R. Co.*, 124 U. S. 656; *Stevens* v. *Paterson & N. R. R. Co.*, 34 N. J. L. 532.

No riparian rights annexed to the Virginia upland could preclude the United States from intercepting such upland by a seawall. *Gibson* v. *United States*, 166 U. S. 269; *Scranton* v. *Wheeler*, 179 U. S. 141. Riparian rights, being subject to the obligation to suffer the consequences of all lawful operations in the stream (*Jackson* v. *United States*, 230 U. S. 1, 21; *Darling* v. *Newport News*, 249 U. S. 540, 543) are enjoyed in subordination to the power

to confine the channel by a seawall and to deposit the material dredged out of the channel behind such wall. *Sage* v. *Mayor*, 154 N. Y. 61, 76; *Home* v. *Commonwealth*, 202 Mass. 422, 429; *Scranton* v. *Wheeler*, 179 U. S. 141, 169.

But conceding that defendant's riparian rights were infringed by the reclamation, that fact would not invest defendant with title to the reclaimed area. An owner of land having a statutory right to wharf out acquires no title to reclamation on submerged soil in front of him, even when made by a stranger. *Austin* v. *Rutland R. R. Co.*, 45 Vt. 215, 242; *Coburn* v. *Ames*, 52 Cal. 385, 398. Much less, when made by the sovereign itself. No economic reason exists for giving the reclaimed soil to the upland owner even if wrongfully deprived of access, since reclaimed soil is not a proper measure of compensation. The shore land having the least valuable riparian rights would, in that event, acquire the major portion of the reclamation.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit brought by the United States in the Supreme Court of the District of Columbia to recover possession of a strip of land on the Potomac River front of the City of Alexandria. Except an insignificant portion as to which no special defence was made and which it is agreed may be disregarded, this strip lay below low water mark until it was filled in by the United States in 1910–1912 by dredging from the bottom of the river and depositing the material on the other side of a riprap wall built on the river bed. Act of June 25, 1910, c. 382, 36 Stat. 630, 639. Act of February 27, 1911, c. 166, 36 Stat. 933, 937. The United States enclosed the made land by a fence at high water mark, but the defendant, the plaintiff in error, claiming title to the adjoining land inshore, destroyed the fence and took possession, whereupon this

action was brought. The defendant pleaded to the jurisdiction of the Court alleging that the land was not in the District but was part of Virginia. On this issue the Court found or ruled in favor of the plaintiff and afterwards did the same upon the general issue, a jury having been waived. Judgment for the plaintiff was affirmed by the Court of Appeals and the defendant took a writ of error to bring the case to this Court.

A question is raised by the defendant in error as to the jurisdiction of this Court. The language of the Judicial Code, Act of March 3, 1911, c. 231, § 250, 36 Stat. 1087, 1159, is that any final judgment of the Court of Appeals may be reëxamined "First. In cases in which the jurisdiction of the trial court is in issue." The words taken literally cover this case, but it is argued that they should be construed as similar words in § 238 concerning the District Courts are construed. In the latter instance, as is well known, they are confined to the jurisdiction of the District Courts as courts of the United States. But the jurisdiction of the District Courts is a limited jurisdiction based upon statutory grounds, and therefore the words of § 238 naturally enough were confined to what always is the first question in a case before them. The Supreme Court of the District of Columbia on the other hand is a court of general jurisdiction, and whether or not the clause of § 250 was suggested by the earlier one, we see no sufficient justification for denying to it the scope that it must have if it is given its natural sense. The plea to the jurisdiction raises the question clearly, and a certificate would add nothing to what the record shows.

We are not prepared to say that the judgment before us was not "otherwise reviewable" on the question of the boundary between the United States and Virginia, so far as the defendant drew in question the construction of the Revised Statutes relating to the District of Columbia, § 1, June 22, 1874, hereafter discussed. We should hesi-

tate to apply the decision in *American Security & Trust Co.* v. *District of Columbia*, 224 U. S. 491, to such a case.

The question of the jurisdiction of the trial Court and that of the merits very nearly coalesce, as the original title, at least, of Maryland and its jurisdiction were founded upon the same facts, and as the United States succeeded to the rights of Maryland by the grant of the District completed in 1791. That the original title of Maryland extended at least to low water mark on the Virginia side it now is too late to deny, in view of the decisions in *Maryland* v. *West Virginia*, 217 U. S. 1, 45, 46; s. c. *ibid.* 577, 578; and *Morris* v. *United States*, 174 U. S. 196. An attempt to throw doubt upon these authorities and upon the effect of the charter of Charles I, June 20, 1632, granting Maryland to Lord Baltimore (*ad ulteriorem dicti Fluminis Ripam et eam sequendo* &c., 217 U. S. 25) "to the farther bank of the said [Potomac] river and following it," by the charters of James I to Virginia and especially by the terms of a grant from the Governor of Virginia to Howsing in 1669 must fail. The latter grant is subordinate to the former and is not inconsistent with it as the language is "extending down Potomack River by various courses 3152 po. making a S. Wtly line to a pokecory" &c. The implication of the words "by various courses" that the grant follows the line of the stream is not changed by the words "including several small creeks or inlets." The land in question is situated upon an indentation, called Battery Cove, but the place is not a creek or inlet. The former decisions of the Court must be followed so far as they go.

The original state of things was not changed by the grant of Virginia and the regrant by the United States of the part of the District on the Virginia side. They at least did not enlarge the rights of that State. The compact between Virginia and Maryland in 1785 also seems to us to have no bearing upon the case. It says nothing

about the boundary in terms. Without going into the history of the compact or reciting it, we only need to remark that it was a regulation of commerce, and while with a view to opening up a route to the West it provided in Article 6 that the Potomac should be considered as a common highway for the purposes of navigation and commerce to the citizens of Virginia and Maryland, and in Article 7 gave the citizens of each State full property in the shores of the river adjoining their lands and the privilege of carrying out wharves, &c., with a common right of fishing, it left the question of boundary open to long continued disputes. It may be laid on one side even if it ever was in force in the District of Columbia, which has been denied on the ground that the compact was abrogated so far as it affected this land by the grant of Virginia and was not revived by the grant of the United States. *Evans* v. *United States*, 31 App. D. C. 544, 550. See *Georgetown* v. *Alexandria Canal Co.*, 12 Pet. 91.

The question of boundary remaining open was submitted to arbitration which ended in an award accepted by the parties in 1878. But that was an arbitration between the two States and did not purport to affect the boundary of the District. The assent of the United States did not enlarge its scope. Act of March 3, 1879, c. 196, 20 Stat. 481. It is said that as the submission was to an ascertainment of the true boundary line the award must be taken to have determined it, but the question was confined to the boundary between the States as they then were, and whatever may be the force of the argument that the same principle ought to govern here, it was not and could not be adjudicated. Further discussion on this point is not needed. The award fixed low water mark on the Virginia side as the boundary, and is only material if at all as suggesting a claim that the low water line should be drawn from headland to headland and in that

way include the indentation or cove where the United States has filled. But we know of no reason for construing the charter to Lord Baltimore as so limited or that to Howsing as importing such a rule.

The only important aspect of the last mentioned suggestion is in connection with a claim of prescriptive right. The land behind the filling of the United States is made land, and the fillings on the Alexandria side go below the original low water mark. In this case, however, there is no attempt to disturb the long maintained possession of such extensions whether originally warranted or not. The only question before us is of the rights of the United States to fill land that hitherto has been under water. The plaintiff in error seeks to exclude it by force of what already has been done and the claims of right that have been made in connection with it. If the taking possession of land were under a deed purporting to convey more than the portion actually occupied, no doubt, within reasonable limits, the sovereign power might give to it the effect of adverse possession of the whole, as against other subjects of the same power. *Montoya* v. *Gonzales*, 232 U. S. 375, 377, 378. But the effect of filling in upon the edge of a stream as against a different power is another matter. Such acts in themselves import no claim beyond the land thus occupied. Maryland and the United States are not called upon to scrutinize the discourse of those in Virginia even if in statutory form. Except so far as actually occupied the seizin of the land remains in the party that has the title. "One who enters upon the land of another, though under color of title, gives no notice to that other of any claim, except to the extent of his actual occupancy." *Hunnicutt* v. *Peyton*, 102 U. S. 333, 369. Still more is this true as against independent sovereign rights.

Finally, on the other hand, the Revised Statutes relating to the District of Columbia, June 22, 1874, § 1, de-

scribe the District as "including the river Potomac in its course through the District," which imports an assertion by Congress that the title of the United States embraces the whole river bed; and the jurisdiction of the District over the river seems to have been exercised without dispute. For cases that have reached the reports see *Alexandria Canal Railroad & Bridge Co.* v. *District of Columbia*, 1 Mackey, 217, 225, 226. *Smoot* v. *District of Columbia*, 23 App. D. C. 266. *Evans* v. *United States*, 31 App. D. C. 544.

It may happen that such filling as is done in this case will interrupt previously existing access to the water front. But that does not affect the right of the United States to possession of the land. What other rights, if any, the plaintiff in error may have does not concern us now.

Judgment affirmed.